

The University of Chicago

THE MEANING OF NOMOS
(NOMOC) IN GREEK LITERATURE
AND THOUGHT FROM HOMER
TO ARISTOTLE

A PART OF A DISSERTATION SUBMITTED
TO THE FACULTY OF THE DIVISION OF
THE HUMANITIES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF GREEK LANGUAGE AND LITERATURE

1939

By

PAUL FLETCHER McCULLAGH

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CHAPTER IV

THE RELATION OF NOMOS TO DIKE, ETHOS, ÊTHOS, TROPOS, AND PHYSIS

An understanding of nomos and its associations may be further increased by examining the relation which the word bears to certain other ethical and philosophical concepts. Its relation to δίκη (dike), ἦθος (ethos), ἡθος (êthos), τρόπος (tropos), and φύσις (physis) will help to elucidate some significant phases of Greek thought.

Nomos and Dike (Justice)

The relation of nomos to dike begins early.¹ Hesiod² bids Perses "give ear to Dike and forget Force, for the son of Cronos appointed this nomos to men, that fishes, animals, and birds should eat each other since Dike is not in them. But to men he gave Dike which is by far the best." Here the nomos appointed by Zeus is connected, though loosely, with dike and set in opposition to force.³

This "proximity" of nomos to dike continues throughout Greek literature. Thus Theognis⁴ complains that "evil men rule by unheard-of nomoi since shame has perished."⁵ In Aeschylus,⁶ Aegistheus "has his dike as it is nomos." Herodotus uses the phrase, δίκην νομίζοντες, "observing dike," while Sophocles⁷ has

¹Cf. R. Hirzel, Themis Dike und Verwandtes (Leipzig, 1907), pp. 56 sq., 384 sq.

²Op. 276.

³It is interesting too that Hesiod employs the verb νέμω with dike (Op. 224) where the reference is to men who have not "distributed" a straight dike.

⁴El. 290.

⁵Here it is suggested that nomoi may be bad as well as good. Cf. Eur. Bacch. 1009, "the nomima outside of dike."

⁶Ch. 998.

⁷Ant. 24.

"with just use of dike and nomos" and (in O.C. 1382) "ancient dike enthroned with the old nomoi of Zeus." Then, too, in Ant. 369 we read of the "dike of the gods," and the "nomoi appointed for men by dike who dwells with the gods below." Euripides¹ also, praising Greece in contrast to barbarian lands, has Jason tell Medea, "You learn dike and how to use nomoi rather than force," though in frag. inc. 1049 nomos and dike are opposed, "If I saw an unjust man at the altar I should let nomos go and drag him to dike." In Aristophanes² also occurs the expression, "opposed to nomoi and dikai," which may be compared to Antiphon v. 19, "inferior to the nomoi and dike," and Plato, Protag. 327 b, "things dikala and nomima."³

It will be seen therefore that, though originally dike has legal associations not possessed by nomos,⁴ nomos and dike, when spoken of together, are for the most part allied and very rarely contrasted.

Nomos and Ethos⁵ (Custom, Usage)

Ethos is frequently synonymous with nomos as in the phrase of Isocrates,⁶ "ancient ethos and ancestral nomos," and that of Lycurgus,⁷ "your nomima and ancestral ethē."⁸

Occasionally a distinction is suggested as in Dem. xx. 105, "neither by nomoi nor by ethē."⁹ In Politicus 295 a, Plato

¹Med. 538.

²Nub. 1040.

³Other similar expressions are: the dike accompanying the nomoi (Dem. xxiii. 59), (altars of) "dike, eunomia, and reverence" (Dem. xxv. 65), "hostile to the nomos, to dike, to the gods, to the mass of men" (Gorgias, frag. 11 a, sec. 17 [Hermann Diels, Die Fragmente der Vorsokratiker griechisch und deutsch (4th ed.; Berlin: Weidmann, 1922)]), "without nomoi and dike" (Anon. Iambl. [Diels, 631 sq.]), "the just is an arrangement of nomos creating justice" ([Plato] def.), "separated from nomos and dike" (Arist. Pol. 1253 a 33), "the nomos is a kind of justice" (Arist. Pol. 1255 a 22). See also Xen. Mem. iv. 4. 12 for a discussion of the dikaiōn and its relation to the nomimon.

⁴Cf. Hesiod Op. 224.

⁵Cf. Hirzel, op. cit., p. 378.

⁶Paneg. 55.

⁷Lycurgus 25.

⁸Cf. also Lycurgus 144 and 25, οὐ νόμιμον οὐδ' εἰσισμένον and τοῖς νομίμοις . . . εἰσισμένους, as well as sec. 75, where the nomoi and the ethē of those who appointed them are "an encomium of the state"; also Pyth. School, Diels 283).

⁹Cf. xxiii. 126, "our ethē and nomoi," and Plato Ep. vii. 325 d.

mentions legislation "in written enactments and in unwritten ancestral *ethē*," while in Laws 690 the statement is made that in the early days of society, men did not need law-givers since they had no "writings" but lived "by *ethē* and the so-called ancestral *nomoi*." *Ethē* therefore are unwritten,¹ as is evident in the phrase of Polit. 298 e, "unwritten ancestral *ethē*," and in the interesting expression of Laws 841 b, "nomimon by *ethos* and made current by unwritten *nomos*." In Laws 793 Plato says that in constructing a state everything should be employed, "*nomoi*, *ethē*, and practices," for with these a city is held together and they are mutually dependent. Written enactments and *ethē* however must have knowledge to supplement them,² and understanding is better than obedience "by *ethē* alone."³

Aristotle offers several phrases in which *ethos* appears. The corporate life must be regulated "by *ethē*, philosophy, and *nomoi*";⁴ in states *nomima* and *ethē* will have power similar to that of the paternal injunctions and *ethē* in a household;⁵ a *politeia* "uses" *nomoi* and *ethē*.⁶ In Pol. 1324 b 22 the word *ethē* seems to refer to unwritten in contrast to written *nomoi*, but the great importance of *ethē* is seen in 1287 b 7, where the statement is made that "*nomoi* in accordance with *ethē* are more effective than *nomoi* in accordance with written enactments," i.e., *nomoi* based on *ethē* are better than any list of rules. Indeed *nomos* depends for its force on *ethos* which requires time,⁷ and therefore care should be exercised in changing ancestral *nomoi*.⁸

Nomos and Êthos (Custom, Character, Mores)

Nomos and *êthos* are linked as early as Hesiod Theog. 66, where the Graces and Desire sing, "the *nomoi* of all and their good *êthea*," though it should be remembered, of course, that both *nomoi* and *êthē* here probably mean simply "place of abode."

¹Cf. the discussion of unwritten *nomos* below, pp. 33 sq.

²Laws 301 e. ³Laws 951 b. ⁴Pol. 1263 b 40.

⁵E. N. 1179 b 32 sq. ⁶E. N. 1181 b 22.

⁷Pol. 1269 a 22.

⁸See below, p. 73. For other examples of *ethos* cf. Dem. xx. 105; xxiii. 126; Plato Laws 300 d; Aristotle Pol. 1319 b 4; Xen. Hel. iv. 4. 3, and Cyr. i. 6. 6, "ancient and accustomed and *ennoma*."

Similar phraseology is seen in: "new êthē and nomoi,"¹ and "to be governed by êthē and nomoi."²

In Dem. xviii. 114 êthē seems to be contrasted with nomoi, "not only in the nomoi but also in êthē."³ In Laws 711 b, c, it is declared that good nomoi may quickly alter the êthē of the state when rulers set an example while, conversely, Aristotle points out that the nomoi can do their work of educating only where the individual's êthos has something in common with virtue.⁴

One of the most interesting discussions of the relation of nomoi to êthē occurs in the little treatise, Airs Waters Places, of the Hippocratean corpus (chap. 16). It suggests the larger question, discussed later, of the place of nomos in the state but may be paraphrased here to sum up the present discussion.

Asiatics are less warlike and of gentler temperament (gentler in êthē) because of the even climate which causes no shocks to either mind or body, shocks being the cause of a spirited nature rather than an evenness of temperament. But there is another cause, the nomoi, for most Asiatics are governed by kings, and when men are not autonomoi, but are ruled by masters, they care not for war, but for the opposite. They toil for their masters with nothing but loss for themselves. Even one who is by nature brave has his character changed by the nomoi of this kind. All the Asiatic Greeks and barbarians who are not ruled thus, but who are autonomoi and toil for themselves, are most warlike of all because the danger they incur is on their own behalf. Wherefore Europeans are more spirited both because of the climate and because of the nomoi, for the nomoi not least of all create a lively spirit, and even where such a spirit does not exist by nature nomos may bring it into being.⁵

Nomos and Tropos⁶ (Bent, Character, Custom)

Euripides, frag. 597,⁷ declares, "A good tropos is more

¹Eur. Med. 238; cf. Her. ii. 35.

²Thucy. vi. 18.

³Cf. Arist. Pol. 1292 b 13 and Plato Ep. vii, "in the êthē and practices of their fathers."

In Dem. xviii. 275, however, êthē and unwritten nomima as well as physis are spoken of together. Cf. Hirzel, op. cit., p. 56. Generally speaking, ethos is much more synonymous with nomos, especially unwritten nomos, than is êthos.

⁴E. N. 1179 b 29.

⁵23. 32, 40; 24. 21.

⁶An interesting phrase containing the three words, tropos, ethos, and êthos, occurs in Plato Laws 968 d, ἐπιτήδεια . . . τρόπων ἥδ' ἐθῶν καὶ ἐθεῶν.

⁷August Nauck, Tragicorum Graecorum fragmenta (2nd ed.; Leipzig; B. G. Teubner, 1889); Diels assigns this frag. to Critias, v. sec. 619.

secure than nomos because no discourse can destroy tropos, character, whereas a speaker often rends a nomos." The two are contrasted also in Thucydides ii. 39 in the phrase, "courage of tropoi rather than of nomoi," where the meaning is "innate courage rather than that inculcated by nomoi." Aeschines i. 5, 6, in a discussion of the relation of nomoi to democracy declares that, whereas democracy is managed by nomoi, oligarchy and tyranny are conducted according to the tropoi of the rulers, and this distinction between individual ways and the group nomoi is seen also in Hyperides vi. 20, "using as nomos the tropos of this man,"¹ while Demosthenes xxiv. 210 speaks of nomoi as "tropoi of the state."²

Nomos and Physis (Nature)

The nomos-physis controversy forms one of the most interesting chapters in Greek thought.³ Beginning with the pre-Socratics and appearing in the Hippocratean writings, Plato, Aristotle, Xenophon, Thucydides, Lysias, Isocrates, Demosthenes, Hyperides, and Euripides it may be said to have engaged the keenest minds of Greek antiquity.

It will be observed that the meaning "convention" for nomos is predominant in early discussions of the problem.

Empedocles employs the word to mean "conventional usage" where he remarks that he speaks of birth and death "according to nomos" (dative), i.e., as people usually do, though their expres-

¹Cf. Isocrates Dem. x. 36.

²Anaxandrides 39 (August Meineke, Fragmenta comicorum Graecorum [Editio minor; Berlin: G. Reimer, 1847]), without context as it is, does not contribute much: "Neither the tropoi agree nor the nomoi."

³Cf. John Burnet, "Law and Nature in Greek Ethics," Int. Journal of Eth., VII (1897), 328; Hardy, Der Begriff der Physis in der Griech. Phil. (Berlin, 1884); Heidel, "Περὶ φύσεως," Pro. Amer. Acad. of Arts and Sciences, Vol. XLV, No. 4 (1910); Charles Huit, La philosophie de la nature chez les anciens (Paris: A. Fontemoing, 1901); Lovejoy, "The Meaning of φύσις in the Greek Physiologists," Phil. Rev., Vol. XVIII (1909); John Walter Beardslee, The Use of φύσις in Fifth-Century Greek Literature (Ph.D. dissertation; Chicago: The University of Chicago Press, 1918); Ottmar Dittrich, Geschichte der Ethik (Leipzig: F. Meiner, 1926), I, 165; E. Burle, Essai historique sur le développement de la notion de droit naturel dans l'antiquité grecque (Trévoux: J. Jeanin, 1908), chap. v.

sion is not exact (themis).¹

"By physis and not by nomos" is found in Philolaus.²

Archelaus³ expresses the contrast in the statement, "the just and the base exist not by physis but by nomos."

Diogenes of Apollonia has "sense perceptions are by nomos."⁴

Democritus, according to Diog. ix. 44, contrasted nomos and physis in his statement that "qualities exist by nomos, atoms and void by physis."⁵

Plato's imitation of Hippias⁶ gives two phrases: "by physis and not by nomos," and "nomos, a tyrant, rules by force, contrary to physis, the majority of human affairs."

The fragment of Antiphon the sophist,⁷ though somewhat confused in statement, is, however, of considerable interest as illustrating the nomos-physis debate. In substance the argument is as follows:

¹Diels (4th ed.), sec. 176, frag. 9.

²Sec. 242, Diels.

³Diels 323.

⁴Aet. iv. 16. 3 mentions Leucippus and Democritus with Diogenes in this reference to sense perceptions existing by nomos.

⁵Diels, sec. 352; see sec. 408 for a similar remark concerning Democritus found in Galen De medic. empir. The statement in Epiphan. Adv. haer. iii. 2. 9 (Diels, sec. 383) that Democritus said, "Nomoi are an evil design and the wise man should not obey them but live in a free manner" is certainly not consistent with frag. 47, "It is seemly for one to yield to nomos and a ruler and the wiser," and frag. 248, "The nomos desires to benefit the life of men and has the power when they themselves desire to be helped," but the contradiction may be due to the paucity of our sources. Nomos as force is seen in a phrase of frag. 181, "by nomos and constraint," used in contrast to exhortation and persuasion while in frag. 245 we read that the nomoi would not forbid each to live according to his power if each did not harm the other, "for envy brings about a commencement of strife." The phrase, "according to the ancestral nomoi," occurs in frag. 259 with reference to the justice of killing an enemy, while in frag. 264 the nomos a man should set up for his own soul (psyche) is to act honorably whether he be seen or not.

⁶Protag. 337 c.

⁷V. Oxyrh. Pap., XI, No. 1364 (Hunt); Diels, II, xxxi; Ernest Barker, Greek Political Theory, Plato and His Predecessors (2nd ed.; London: Methuen, 1925), p. 83; Sir Paul Vinogradoff, Outlines of Historical Jurisprudence (London: Oxford University Press, 1920-22), II, 42; Adolf Menzel, Kallicles, Zeit. für offentliches Recht, III¹ (1922), p. 59; Werner William Jaeger, Paideia (Berlin and Leipzig: W. de Gruyter and Co., 1934), I, 149, n. 1.

Justice consists in not acting contrary to the nomima of the city in which one lives. An expedient course of action therefore would be to respect the nomoi before witnesses but, when alone, to revere "the things (injunctions) of physis," for the injunctions of the nomoi are imposed and accepted by convention, but "the necessary things of physis" are natural. So the man who transgresses the nomima without being observed is free from disgrace and punishment, but it is not so with "things that develop by physis." Most of the things that are just according to the nomoi are opposed to physis. To the eyes it has been appointed what they should see and to the ears, tongue, hands, feet, and mind what they shall do, but both the things from which the nomoi turn men and those to which they turn them bear the same relation to physis. The advantages from the nomoi are checks upon physis, but "the things of physis" are "free." The nomoi do not either help those who obey them or harm those who disobey.

In the Hippocratean corpus a significant use of nomos in connection with physis occurs in Airs Waters Places,¹ where the description of various races is given.

Those which differ but a little I shall omit and describe those which differ greatly either by physis or by nomos. To begin with the Macrocephaloi, at first nomos was the cause of their long heads, but now physis assists nomos. Since they consider noblest those with long heads, "it is thus concerning the nomos"; when a child is born they shape the tender head with their hands and apply bandages and so forth to increase the length. Thus at first "the nomos brought it about that the physis should be thus as a result of force," and with the lapse of time it existed "in physis" (naturally), so that the nomos no longer used compulsion. Since, therefore, children resemble their parents, what prevents a long-headed parent from having a long-headed child? Now, however, a change has taken place and the nomos is no longer strong "because of the mingling of men."

This remarkable discussion of the inheritance of acquired characteristics has not, of course, even yet found a definite conclusion.

The relation between nomos and physis is expressed several times elsewhere in the Corpus. "Nomos is opposed to physis with reference to these things,"² is the position usually taken.

Nomos and physis, by which we do all things, do not agree, though they do agree. Men appointed nomos without understanding the things about which they appointed nomos, but the gods ordered the physis of all things. What men order is never constant, but what the gods appoint is always correct. So great is the distinction between things correct and things incorrect.³

The antithesis comes out again in other statements; e.g.,

¹14 sq. ²Regimen 1. 4. 35.

³Reg. 1. 11. 10.

"Names are conventional (nomothetemata) but not so are forms (eidea) which are off-shoots of physis";¹ "I declare that names have been given according to nomos";² "the diaphragm has a name by chance and by nomos but not by reality nor by physis."³

With this sentiment one may compare Sacred Disease 17. 8, "With the brain we distinguish the ugly, beautiful, evil, good, pleasant, and unpleasant, distinguishing some by nomos, and perceiving others by expediency"; and Nature of Man 2. 32, "The constituents of man remain always the same, both according to nomos and according to physis."⁴

Plato was deeply conscious of the importance of the problem of physis-nomos which he had inherited from earlier discussion, and in some interesting descriptions of the origin of nomos he indicated the significant diversity of opinion existing in his own day and his own solution of the problem.

In the Gorgias the position of Callicles is that nomos and physis are contraries,⁵ and that Socrates is confusing the two. By physis the evil of suffering injustice is disgraceful, while by nomos it is more disgraceful to commit injustice. Those who make nomoi are the weak many who do so with reference to their own interest, and thus attempt to restrain the strong. They make it wrong by nomos to get more than another, although physis says that the rule of the stronger is just. Strong men act according to the "nomos of physis."⁶ The other nomos is framed by us to curb the best of our youth. It is contrary to physis and "similar to spells and charms."

The remainder of the dialogue is an examination and refutation of the ethical position here maintained.⁷ Before Socrates enters more fully into his task, it is easy for him to show that

¹Art 2. 16.

²Nature of Man 5. 5.

³Sacred Disease 20. 3.

⁴If this means, "in name as well as in reality," the point of view here differs, of course, from that expressed above.

⁵Gorg. 482 a; cf. Rep. 364 a and Menex. 245 d.

⁶Probably the first time in literature that this phrase occurs. Cf. also Tim. 83 e, and Rudolf Hirzel, "Ἀρχαῖος νόμος," des XX Bandes der Abhandlungen der philologisch-historischen Classe der Königl. Sächsischen Gesellschaft der Wissenschaften, No. 1 (1900), pp. 23 sq.; idem, Themis Dike und Verwandtes, p. 391.

⁷Cf. Menzel, Kallicles.

the many are superior to the one, that their nomima are therefore those of the stronger, hence of the better, that they are as a result according to physis and that, maintaining as they do that justice is equality, they are right, and physis and nomos are not opposed (a belief which is, of course, that of Plato though the method of arriving at it is not his final one). The problem recurs, e.g., in the Protagoras, where nomos is a tyrant forcing men to act contrary to physis,¹ and in the Theaetetus,² where the statement is made that whatever nomima each state appoints for itself concerning right and wrong are right and wrong for that state. It is against this ethical relativity that Plato is striving, though in his account in the Laws of the origin of nomos and his frequent discussion of the problem he sees an element of truth therein. It is the problem of the Crito again, how to assure stability for the moral and social traditions while providing at the same time for improvement where necessary.

Another discussion of the problem occurs in the Republic. After Thrasyarchus has maintained that each power establishes nomoi with a view to its own benefit,³ Glaucon sets forth the contract theory of the origin of nomos. To do injustice is, by physis, good, but it is not always easy to do injustice constantly without at times suffering injustice from others. Hence come nomoi, and that which is ordained by nomos is nomimon and dikaion. The significance of this statement in the general argument of the Republic is, of course, evident.

In Aristotle nomos with the meaning of "convention" occurs several times; e.g., in E. N. 1094 b 16, where it is stated that the difference of opinion on moral matters is so great that they are thought to exist by nomos only and not by physis, and that too much exactitude cannot therefore be demanded. Money is spoken of as "simply nomos, but by physis nothing at all,"⁴ while, in E. N. 1133 a 30, it is asserted that the name "nomisma" is used (of money) because money "is not by physis but by nomos," and it is in our power to make it valueless. The phrase, "with reference to nomos," also occurs in Rhet. ii. 6. 23 in connection with that which is shameful by convention only,⁵ while in Pol.

¹337 d. ²172 a. ³338 e. ⁴Pol. 1257 b 11.

⁵Cf. Rhet. ii. 12. 10, "they have been trained by nomos alone," and have no independent point of view.

1255 a 5 we read of the slave "according to nomos," "for the nomos is a kind of agreement by which prisoners are said to belong to their captors."¹ In Rhet. 1. 5. 21 nomos is spoken of as an agreement, so that anyone who destroys an agreement destroys nomoi.

These remarks, if taken without reference to the Ethics and Politics as a whole, would, of course, be misleading. In reality they merely show that Aristotle recognizes a current meaning of the word nomos, not that he approves of the sophistic definition of the word, a definition decidedly contrary to the political philosophy of Aristotle himself. This is clearly indicated by a remark in Pol. 1280 b 11, where we are told that "when a state is only one in name and does not exist to make the citizens good, nomos becomes a contract and, as Lycophron says, a surety to guarantee mutual justice." Nomos then is something more than a contract (syntheke); indeed, "where nomoi do not rule there is no politeia (constitution)."²

The pre-Socratics, Hippocrates, Plato, and Aristotle serve best to illustrate the nomos-physis debate but numerous references in other authors will afford valuable supplementary material. Thus we find in Euripides³ the statement, "Physis who cares not for nomoi desired it," though in Ion⁴ they are rather allied, "Nomos and physis together made me just in the sight of the god."⁵ In an interesting chorus of the Bacchae⁶ we find physis grouped with the nomimon and the divine (daimonion) in the statement, "Whatever is divine, or by the lapse of time nomimon, and based on physis, this has power."

The Melian dialogue of Thucydides affords another significant instance:

We believe, of the gods by general opinion, of men with certainty, that everywhere by a necessary physis, they

¹Cf. 1255 b 15.

²Pol. 1292 a 32; for justice, "physikon" and "nomikon" see E. N. 1134 b 18 sq.

For "the nomos according to physis" as "the common nomos" in contrast to "particular nomos" (Rhet. 1. 10. 3) see next chapter where "unwritten nomos" is discussed.

³Frag. inc. 920, assigned by Meineke to Anaxandrides 67.
⁴643.

⁵In frag. 141 (Andromeda) "they are ill by nomos" seems to signify "they are ill in imagination."

⁶891.

rule wherever their power allows. We are not the first to appoint this nomos or use it; we found it already existing and will leave it to exist forever.

Likewise in iii. 45 Diodotus speaks of the "physis of man" in its relation to nomos:

All make mistakes, and no nomos will prevent them nor, when human physis pushes on to attempt something, can it be deterred by the force of nomoi or any other dread. Our protection must come not from the severity of nomoi but from careful management of affairs.¹

Several examples in the orators and Xenophon may be cited by way of further illustration.

In Lysias the nomos-physis contrast is found in ii. 61, "not forced by the nomos but persuaded by physis."

In Isocrates we find two references, "By physis they are citizens, but by nomos are deprived of a share in the constitution,"² and "For comradeship physis is much more powerful than nomos, and tropos than blood relationship, and choice than necessity."³

Demosthenes appears to express contrary notions though it should be remembered that the authenticity of Or. xxv (Aristogiton) is doubtful,⁴ and also that an orator may claim the right to be inconsistent at times. In sec. 15 sq. of the Aristogiton discourse nomos and physis are definitely in opposition:

The whole life of men, whether they dwell in a great or small city, is ruled by physis and nomoi. But whereas physis is not constant, but varies with the individual, nomoi are common, and fixed, and the same for all. Physis, if depraved, often wills base things, but the nomoi will the just and the expedient, and this they seek, and when discovered they are established as a common injunction, to all equal and alike, and this is nomos.

This dictum must be compared however with the remark in the same oration⁵ that "there is even a nomos of physis⁶ for both men and animals, to love their parents," and also with the state-

¹iii. 46.

Cf., in the striking analysis of stasis (iii. 82), the remark that "human physis is wont to rebel against nomos and now, overpowering the nomoi, it displays unrestrained passion, disregard for justice and hatred for what is superior."

²Paneg. 105.

³Dem. 10.

⁴Cf. H. Weil, "L'auteur du premier discours contre Aristogiton, est-il bien informé des institutions d'Athènes?" Mélanges Renier (Paris: F. Vieweg, 1887), pp. 18-25.

⁵Sec. 65.

⁶Cf. τὰ τῆς φύσεως οἰκεῖα (xlv. 53).

ment that "whatever nomos each man has by physis with reference to his fellow men should be applied to him by them."¹ Indeed, at times in Demosthenes physis and nomos are hardly opposites; e.g., in xviii. 275 we read that "sympathy should be given to honest failure, not only in the nomoi, but physis itself in unwritten nomima and human êthē has established it."

Hyperides offers one example (though the "physis of each one" is not physis in general): "Grief is not checked either by argument or by nomos, but the physis of each one and his friendship fixes the limit" (vi. 41).

Xenophon contrasts physis and nomos in one instance,² where it is stated that tyrants are hated by those related to them by physis, but forced by nomos to love them, and hence are hated by all.

¹Sec. 81.

²Hiero iiii. 9.

CHAPTER V

NOMOS PERSONIFIED; NOMOS AND THE GODS; ANCESTRAL AND UNWRITTEN NOMOS; NOMOS AND PAN-HELLENISM; UNIVERSAL NOMOS

The Personification of Nomos¹

The personification of ethical concepts and abstractions generally was a simple matter for the Greeks. It will not be a surprise, therefore, to find that nomos is described frequently in terms which form some of the most eloquent passages in Greek literature.

The tendency is displayed at an early period, notably in Hesiod: Dike is driven out by men who devour bribes; Confusion (Δυσνομίη) is the child of Strife, while Eunomie, with Dike, Peace, and the fates are the offspring of Zeus and Themis.

Likewise, in Alcaeus 72, we read of drunkenness being introduced "where nomos used to speak."²

One of the most famous personifications is, of course, the "nomos lord of all" of Pindar:

Nomos lord of all, mortals and gods, robs with hand of power, giving justification to the greatest might. Witness the labours of Heracles for without permission or pay he drove the cattle of Geryon to the gates of Eurystheus.³

The difficulty of exact interpretation is the fact that

¹Cf. Carl Conrad Hense, Poetische Personification in griechischen Dichtungen mit berücksichtigung lateinischer Dichter und Shakspeare's (Halle: Waisenhauses, 1868).

²Cf. Hyperides vi. 25, "the voice of nomos has authority"; Aeschines iii. 16.

³νόμος ὁ πάντων βασιλεὺς
θανάτων τε καὶ ἀθανάτων
ἄγει δίκαιων τὸ βιαιότατον
ὑπερτάτῃ χειρὶ. τεχμαίρομαι
ἐργοῖσιν Ἡρακλέος ἐπεὶ Γηρυόνα βόας
κυκλωπίων ἐπὶ προθύρων Εὐρυσθέος
ἀναιτήτας τε καὶ ἀπριάτας ἥλασεν.

the complete context is lacking. Herodotus' use of the phrase¹ to illustrate the power of custom is obviously a misinterpretation. Plato's interpretation in the Gorgias² in favor of the thesis that might is right is more probably in line with Pindar's own thought, though it should be remembered that Plato, for purposes of debate, may well be giving the passage a shade of meaning not in the original. However that may be, the general tone of the fragment is particularly interesting because of its conception of a nomos which includes both gods and men and embodies a universal principle.³

Herodotus offers three examples which throw a good deal of light on his philosophy of nomos.

The first is in the story of Cambyzes' marriage with his sister.⁴

Since it was not the custom of the Persians to marry their sisters, the king summoned the royal judges and inquired whether there was any nomos allowing a man to marry his sister. The judges, who were interpreters of the ancestral thesmoi declared that, although they did not find a nomos allowing the marriage, they found another which allowed the king of the Persians to do whatever he desired. So [concludes Herodotus] they neither dissolved the nomos, nor interpreted it too severely, but discovered another nomos which was an ally (symmachos) for the person wishing to marry his sister.⁵

The second example occurs in iii. 38. After recounting many impious actions of Cambyzes, Herodotus concludes that the man was mad,

for otherwise he would not have mocked religious observances and nomaia, since if men were allowed to choose the fairest nomoi from all nomoi, they would look them over

¹iii. 38.

²484 b.

³Cf. Otto von Schroeder, "Νόμος βασιλεύς," Philologus, LXXIV (1917), 195 sq.; Hans Erich Stier, "Νόμος βασιλεύς," Philologus, LXXXIII (1928), 225 sq.; Alfred Croiset, La poésie de Pindare et les lois du lyrisme grec (2nd ed.; Paris, 1886), p. 174; Plato Gorgias (Thompson) 171; Menzel, Kallicles, pp. 31 sq.

⁴iii. 31.

⁵The question arises here whether this nomos discovered by the royal judges was a written enactment or a precedent. Whatever answer be given it is clear that the use of nomos to mean written enactment was an easy transition from its use to mean "custom." The royal nomoi of Creon (Soph. Ant. 449) suggest legislation or decrees but to indicate a first reference to nomos as a legislative enactment in contrast to its meaning of custom would be difficult. Note that Herodotus employs thesmoi here as a synonym of nomoi.

and choose their own. The proof that such are men's thoughts (οὕτω νομοίῃσι) about nomoi is afforded by the experiment of Darius who suggested to certain Greeks that they eat the bodies of their dead fathers, and to certain Indians that they burn the corpses of their fathers. Each group refused in horror. So is customary opinion [concludes Herodotus] and I opine that Pindar was right when he said nomos is lord of all.

The other passage comes in vii. 104, in the conversation between Xerxes and Demaratus, where Demaratus is explaining the morale of the Spartan troops.

Though they are free they are not altogether so for they have over them, as master, nomos whom they fear much more than your men fear you. Whatever he orders they do and he always gives the same command, not to flee before numbers but to remain and either win or die.

There are two points to be noticed in these accounts. One is the ethical relativity expressed in the first two stories, suggesting the position of Herodotus with reference to the nomos-physis debate though, of course, he does not employ the language of the philosophers; the other is the emphasis placed by Herodotus on the power of nomos as an inner compelling force in contrast to external, physical, compulsion. This conception of nomos as a moral law is in line with the most profound Greek utterances on divine and unwritten nomos and its power over men. One need not see a contradiction between these points of view as expressed by Herodotus. They are rather complementary.¹

In Plato the tendency to personify is frequently displayed. Omitting phrases which might be considered mere idiom the following are the more interesting examples: nomos as master;² as king of all, the phrase of Pindar;³ king of the state;⁴ tyrant;⁵ nomoi as wise and loving parents;⁶ as ally to all citizens;⁷ in Polit. 294 b, nomos is likened to an ignorant and stubborn man; in Rep. 548, in the first form of debased polity, men run away from the nomos "their father"; the nomos praises the good and noble;⁸ men serve nomoi as they do rulers⁹ or come to their aid;¹⁰ nomos is

¹For nomos and freedom y. Lysias ii. 19; Dem. x. 4; xxiii. 139.

²Ep. viii. 355 e.

³Gorg. 484 b.

⁴Symp. 196 c; Ep. viii. 354 b.

⁵Protag. 337 d.

⁶Laws 859 a.

⁷Rep. 590 e.

⁸Laws 663 a.

⁹Laws 698 b, c; 762 e; 856 b; Ep. vii. 334 c; 337 c; Ep. viii. 354 c.

¹⁰Laws 715 c; 890 d.

the helper of the state's constitution,¹ or of water which may be poisoned and need aid;² nomos has a voice³ and may utter a curse,⁴ while sometimes nomos "may not care,"⁵ men should be less than, or inferior to nomoi.⁶

The most vivid example of personification is, of course, in the Crito, where the condemned Socrates has a dialogue with the nomoi of his country. The passage⁷ is an eloquent example of an expression of sentiment common throughout Greek literature concerning the importance and authority of nomos in human life.

Is Socrates to destroy us the nomoi and the whole city? Is he to make private judgments prevail over legal? From birth throughout the life of man we exercise our supervision; nurture and education acquire their character from us. We have given you and all citizens all the fair things we could. You might have left the state on reaching years of discretion, and gone to other nomoi; instead of that you remained, forming thus a contract which you will break if you escape. You should honour us even more than your parents, because your country is more to be valued than parents or ancestors, and no city without nomoi can satisfy anyone. It is men, not we, who wrong you. Do not pay evil for evil; there are nomoi in Hades also which will condemn you in that case, as we shall.

Thus does Socrates perform his duty both to the nomoi of his country, by remaining, and to his own vision, by striving for an improvement in his fellow-men, and thus, at the same time, in those nomoi under which they live.⁸

¹Laws 921 c.

²Laws 845 d.

³Laws 938 a.

⁴Laws 871 b.

⁵Rep. 519 e.

⁶Ep. vii. 337 c; cf. Polit. 299 c.

⁷50 sq.

⁸Vivid colloquial phrases might be cited from almost any author but they are so common that, compared with the above, they can hardly be looked upon as significant examples of personification; e.g., Aristophanes, "give aid to the nomoi" (Pl. 914); "the nomos draws you" (Ecc. 1056); Antiphon, "avenge the nomos" (i. 3. 24); "more powerful than the nomoi" (v. 2); "trust in the nomoi" (i. 105); Isaeus, "the nomoi take the lead" (iv. 22); Isocrates, "the nomoi with which we live" (Arch. 66); "the nomos is the soul of the polis" (Areop. 14); Aeschines, "scorning the nomoi" (i. 67); "nomoi as helpers" (iii. 37); "the nomos speaks" (iii. 16); "the nomoi preserve" (i. 1. 5); Demosthenes, "blackmail the nomos" (lxviii. 12); "the nomoi have not died" (xliii. 60); "he insults the nomoi" (xxi. 32); "telling the nomoi to be off" (xxi. 39); Aristotle (quoting Alcidas), "nomoi are kings of the city" (Rhet. iii. 3. 3); Xenophon, "a good ruler is a nomos with eyes" (Cyr. viii. 1. 21); "a servant of the nomoi" (Ag. vii. 2. 3).

Nomos and the Gods

The idea of personification is closely allied to that of divinity. As we have already seen, in Hesiod, Eunomie is the child of Zeus and Themis;¹ Pindar employs the phrase, "in the nomoi of the gods,"² while Aeschylus in several contexts expresses the same idea of nomos existing among the gods and even being transgressed by gods; e.g., "contrary to the nomos of the gods";³ Zeus holds sway "by new nomoi, lawlessly,"⁴ and "by private nomoi";⁵ Zeus rules fate "by an ancient nomos";⁶ young gods trample on "ancient nomoi."⁷

In Sophocles the religious associations of the word are very strong. We have, for example, "honouring the nomoi of the land,"⁸ and "ancient Dike enthroned beside the old nomoi of Zeus."⁹ This association of nomoi with the gods is most evident in Sophocles with reference to the rite of burial: "If you leave Ajax unburied," says Odysseus to Agamemnon, "not him, but the nomoi of the gods you will destroy."¹⁰ In this respect it is, of course, the Antigone where the most vigorous expression is found, for the conflict there is between human and divine nomos. Eteocles has been buried "with just use of dike and nomos." Antigone resolves to bury her other brother in obedience to the "unwritten and firmly-established nomima of the gods."¹¹ Creon embodies the nomos of the state; he is the man who maintains that the character of a ruler "cannot be known until he has been tested in ruling and nomoi," and who sets forth the nomoi (principles) according to which he intends to guide the state.¹² Polyneices may not be buried, for he is one who came to burn shrines, to ravage his country and "scatter the nomoi."¹³ The chorus echoes the importance of obedience to the nomoi of the land in the famous "Ode to Man": "honouring the nomoi of the land and the dike of the gods that he has sworn to respect, great is his city,"¹⁴ but Antigone

¹Theog. 902.

²Py. 11. 43.

³Eum. 171.

⁴Prom. 150.

⁵Prom. 404.

⁶Supp. 673.

⁷Eum. 778.

⁸Ant. 369.

⁹O. C. 1382.

¹⁰Cf. also Al. 1130.

¹¹455. The other use of nomimos in Sophocles is in El. 1095 in the phrase, "the supreme nomima."

¹²191.

¹³287.

¹⁴369.

opposes to Creon the nomoi of Dike: "Not of like nature to this edict are the nomoi appointed for men by Dike who dwells with the gods below. The decrees of Creon I deem not of such power that a mortal may transgress the unwritten and firmly-established nomima of the gods, for they are not of to-day or yesterday but are immortal and no one knows whence they came."¹ Hades has his nomoi as well which he "desires,"² to which Creon retorts, "But the good desires not to receive the same nomoi (treatment) as the evil." But Creon too admits at the end, "I fear that it is best to live one's life honouring the appointed nomoi," where "the appointed nomoi" are clearly those appointed not by him but by the gods themselves.

In Euripides as in Sophocles nomos is associated with divinity. "We may be weak and enslaved," says Hecabe,³ "but the gods are strong and nomos which rules them."⁴ Theseus' statement in Supp. 563 concerning the "ancient nomos of divinities" being destroyed if the dead are not buried expresses a typical Greek point of view, for here the "nomos of divinities" and the "nomos of the Pan-Hellenes" are one, and if a nomos contrary to this be set up it will bring dismay to the strongest.⁵ In addition to the nomos of burial there is also the nomos exiling murderers,⁶ cleansing of blood guilt,⁷ and the "nomos of god" regarding the sanctity of a temple interior.⁸

Individual gods or groups of divinities possess or rejoice in certain nomoi. There are, e.g., those of Aphrodite;⁹ of Apollo, "the ancient nomos of the tripod";¹⁰ of Artemis, "in these nomoi the goddess rejoices,"¹¹ though in the latter instance "only the name is fair"; and the "nomos of the gods below," referring again to burial.¹² The gods generally may not act con-

¹Ant. 455. Cf. the magnificent strophe of O. R. 865, "lofty nomoi, of which the Olympian alone is parent, not shall they ever rest in oblivion, for in them is a mighty divinity that grows not old."

²Cf. frag. inc. 777, the "nomoi of Hades."

³Hec. 800.

⁴Nauck considers the following lines interpolated: "For by nomos we believe in the gods and live defining the bounds of right and wrong."

⁵Supp. 541.

⁶H. F. 1322.

⁷Orest. 429.

⁸Ion 229.

⁹Hipp. 461.

¹⁰Ion 1322.

¹¹I. T. 35.

¹²And. 1198.

trary to the will of another, for "this is a nomos for gods,"¹ though the Erinyes do not all obey the nomos established by Pal-las in the trial of Orestes.²

For the idea of the gods establishing nomos for mortals we may recall the remark of Death to Apollo,³ reproaching him for favoring the wealthy, "You establish a nomos on the side of the rich." Hippolytus declares that mankind "uses" the nomoi of the gods⁴ though Ion may criticize Phoebus for setting up nomoi for men⁵ and then transgressing them, the reference being to the in-trigue of Apollo with Creusa,⁶ and, in line 1313 of the same play, Ion again suggests that the deity appointed nomoi for men "not well" when he allowed the sinful to approach an altar. Indeed, Euripides, like Xenophanes and Plato, offers not a little theo-logical criticism. Even more severe than the above examples are the lines of H. F. 1316 where Theseus says, "If poets tell the truth, have the gods not married those where no nomos allows and chained parents? Yet they dwell on Olympus in spite of their misdemeanours."

More rhetorical expressions are common in the orators, as, e.g., in Antiphon,⁷ "irreverence towards the gods and the nomoi."⁸ In Antiphon too the divine origin of nomos is referred to in i. 3, "nomoi which we have received from the gods and our ancestors," while this idea is seen also in the words of Isocra-tes,⁹ "the nomoi appointed by the divinity," and "the nomos which all use constantly, not as one dependent on the physis of man but as one appointed by divine power."¹⁰ The eloquent passage of Demosthenes¹¹ even states that "divine things" are ordered by nomos: "The whole cosmos, and divine things, and the so-called seasons (horai) seems to be regulated by nomos and taxis," while

¹Hipp. 1328.

²I. T. 970.

³Alc. 57.

⁴Hipp. 98.

⁵The verb "write" is used. Ordinary language is employed regularly to describe the setting up of nomoi by the gods though, of course, a more respectful tone is usually evident than in some of Euripides' utterances.

⁶Ion 442.

⁷v. 88.

⁸Cf. Aeschines i. 14, "honour is rendered to the nomos and the divine," and iii. 196, "democracy is preserved by the gods and the nomoi"; Plato Laws 741 d, "by nomos and god together," and Laws 762 e where obedience to nomoi is "service to god."

⁹Panath. 174.

¹⁰Sec. 169.

¹¹Aristogiton ii. 26, 27.

in xxv. 15 sq. occurs the remark, "Every nomos is the discovery and gift of god."¹

This latter conception is expressed also in Heracleitus² where it is stated that "all human nomoi are nourished by one, the divine."³ A somewhat more sceptical expression of opinion occurs in Critias⁴ where the early life of man is described, and it is asserted that "nomos as chastisers, along with the fear of the gods, were invented together to prevent secret crime with the result that anomia was quenched by nomoi." However, the statement of Aristotle⁵ is more in harmony with Greek thought on the whole: "The person who advises that nomos should rule appears to advise the rule of god and intelligence alone."

Xenophon's "nomos of god" as "unwritten nomos" is discussed in the following section.⁶

Ancestral and Unwritten Nomos

The famous phrase of Sophocles in the Antigone, "unwritten

¹A reverence, similar to that reserved for divine nomos, was likewise bestowed on the early law-givers who first codified (and doubtless improved upon) unwritten nomos. Solon and Lycurgus were particularly revered but the many other names which have come down (Zaleucus in Locris, Charondas in Catania, Diocles in Syracuse, Pittacus of Mytilene, etc.) show the fame these men enjoyed and, what is also noteworthy, the interesting development in the 7th cent. B.C. from traditional nomoi to written nomoi. Sometimes, with reference to early codes, the human and divine are hardly distinguishable; e.g., Zeus was thought to have given Minos and Rhadamanthus the laws of Crete, and Athena to have handed down the laws of western Locris to Zaleucus. It has been suggested (v. Gertrude Smith, Cl. Phil., XVII, 187 sq.) that the belief in the divine origin of laws may be the cause of the frequently difficult procedure necessary to alter them. (Cf. the story told in Dem. xxiv. 39 of the rule at Locris; v. p. 60 below.)

²Frag. 144.

³In Pherekydes of Syros (Diels, sec. 508) the "nomos for gods and men" appears to refer to marriage custom.

⁴Frag. 25.

⁵Pol. 1287 a 29.

⁶Nomoi as rules of religious observance are mentioned in Mem. i. 3. 1, where we read that worship of the gods will be correct if a man knows the nomoi according to which the worship will be performed and therefore the pious man is he who knows "the nomima concerning the gods," and follows the Delphic injunction to live "according to the nomos of the state" (cf. Mem. iv. 3. 16). Similarly in order to be just, a man must know what the nomoi (of the state) command, for such things are just. Knowledge will result in action and therefore the just man is he who knows "the nomima concerning men" (Mem. iv. 6. 3).

and secure nomima of the gods," serves to recall some of the most interesting speculation on the part of the Greeks concerning nomos, namely, that dealing with unwritten nomos.¹

Though most of the systematic treatment of this concept by the various authors employs the phrase, "unwritten nomos," the words, "ancestral nomos" and "ancestral things" (πάτρια, πατρώον), are also frequently used. It will be of interest therefore to observe some of this cognate phraseology in order to supplement the more direct statements regarding "unwritten nomos." Such phrases as the following may be noticed:

Ancestral nomoi;² according to the ancient nomos;³ according to the ancestral nomoi;⁴ the nomos of forefathers;⁵ nomimon "in a long period of time";⁶ neither ancestral nor Greek;⁷ according to the ancient nomimon;⁸ ancient ethos and ancestral nomos;⁹ the nomoi which our ancestors left;¹⁰ nomima handed down by our ancestors;¹¹ the nomoi of ancient foundation;¹² in ancestral nomoi;¹³ in ancient êthē and nomima;¹⁴ things ancestral and written;¹⁵ nomoi and written things;¹⁶ unwritten ancestral êthē.¹⁷

Quotation has already been given, in connection with religious sentiment in Sophocles, of the two magnificent expressions, one of the Antigone concerning the unwritten nomima of the gods, "which are not of to-day or yesterday but are immortal and no one knows whence they came," and the other of the O. T. dealing with the "lofty nomoi, of which the Olympian alone is parent."

An eloquent expression occurs also in Thucydides, in the funeral speech of Pericles:

¹For a detailed discussion v. Hirzel, "Ἀγραφὸς νόμος, Menzel, Kallicles, p. 17; Ludolph Georg Dissen, "De νόμοις ἀγράφοις," Kleine lateinische und deutsche Schriften (Göttingen: Dieterich, 1839), pp. 161 sq.; Burle, "La notion de droit naturel dans l'antiquité grecque," chaps. vii and x.

²Her. iii. 82; cf. iii. 80, νόματα πάτρια.

³Thuc. i. 24. ⁴Thuc. iv. 118.

⁵Eur. Ion 20; cf. Alc. 683. ⁶Ibid. 895. ⁷Alc. 683.

⁸Lysias vi. 51. ⁹Isoc. Pan. 55. ¹⁰Antid. 213.

¹¹Dem. xxvi. 13. ¹²Dem. xxiv. 39 sq.

¹³Referring perhaps to a game; Crat., frag. 112.

¹⁴Pythagorean School (Diels, sec. 283).

¹⁵Plato Polit. 296 c. ¹⁶Ibid. 299 c.

¹⁷Ibid. 298 c; cf. also Antiphon v. 48; Andocides i. 110, 115; Lycurgus 60, 129, 147; Democritus, frag. 259; Xen. Hel. ii. 3. 2.

Our politeia does not copy the nomoi of our neighbours but is rather a model for them. According to the nomoi there is equality for all. The freedom we enjoy does not make us lawless as citizens, but we obey those in authority, and the nomoi, especially those protecting the wronged and those which, unwritten, bring admitted shame.¹

Some significant echoes of this sentiment concerning unwritten nomos reach us from the law-courts to indicate that considerations of a practical nature were also involved. Thus Andocides² insists that "magistrates may not use unwritten nomos with reference to an individual." A somewhat different opinion is expressed by Lysias: "It was the advice of Pericles that against the impious you should employ not only written nomoi but also the unwritten according to which the Eumolpidae govern, and which no one has ever had the power to abolish or the daring to disobey, nor do men know who established them."³ Demosthenes⁴ also asserts that nomoi need not be written in order to demand obedience, since there is the "common nomos of all men" concerning some matters such as resistance to the seizure of one's property⁵ even as there exist the rules (οἰκῆτα) of physis.⁶

However, the most complete statements concerning unwritten nomos occur in Plato, Aristotle, and Xenophon.

In Xenophon a somewhat confused statement is found in Mem. iv. 4. 12 sq. When Hippias agrees that the nomimon and the dikaion are the same, Socrates brings up the question of unwritten nomoi. Hippias says that they are those which are looked upon in the same way in every land. But if this be so they cannot have been made by men speaking different languages, but by gods. Examples are reverence for parents and avoidance of incest. Even if men transgress the "nomos of god" concerning incest, they never escape punishment as in the case of disobedience to the nomoi of men, for the penalty is that of bringing into the world inferior offspring, since parents should be physically mature. Repaying kindness is also "everywhere nomimon," disobe-

¹In the awful collapse of community life when it is attacked by "stasis" (civil strife) men destroy "the common nomoi about such matters" from which they may hope for salvation in the time of need (iii. 84).

²i. 85, 89. ³vi. 10. ⁴xxiii. 61.

⁵Cf. also xxiii. 85; xviii. 275; and "unwritten nomima," xxiii. 70.

⁶xlv. 53, mentioned with written nomoi.

ence to which brings loss of friends. Hippias agrees that nomoi which of themselves bring punishment for transgression must be appointed by someone superior to a human being. Hence the gods also must identify the nomimon and the dikaion since they could not appoint what is unjust.¹

In Plato the reverence for nomos displayed in the Crito is vividly seen also in the conception of unwritten nomos. Examples here will show, what has doubtless become evident already, how impossible it is to translate nomos by either "lex" or "law." An interesting use is the phrase, "legislating unwritten legislation,"² and in the same dialogue there is a mention of legislation "both in writing and in unwritten ancestral ethē." Thus too, in Laws 680 a, "men in the early days of society did not need law-givers for they had no 'writings' but lived in accordance with ethē and the so-called ancestral nomoi, and³ each family with its 'private ethē' enter into the larger social unit bringing 'private nomoi.'" Ethē are thus closely associated with the unwritten nomos, as may be seen in the familiar phrase, "nomoi and ethē."⁴ Other examples occur in Polit. 298 e, where the unwritten ancestral ethē are contrasted with nomoi written on tablets and columns; and in phrases such as, "unwritten nomos concerning incest";⁵ "contrary to the ancestral tradition and written enactments";⁶ "contrary to the nomoi and written enactments,"⁷ where nomoi are obviously more than written enactments; "they care not for nomoi written or unwritten."⁸ Thus though the word nomos is not always employed with the adjective "unwritten" the usage obviously equates nomos with much more than a written statute. In one instance even⁹ unwritten nomima are said to be similar to ancestral nomoi, and the identification is clear in the cumulative phraseology of Laws 841 b, "nomimon by ethos and esteemed right by unwritten nomos," where nomimon, ethos, the verb νομίζω, nomos, and unwritten are all used together.

A paraphrase from Laws 793 indicates Plato's view of this aspect of nomos:

¹In Cyr. vii. 5. 73 occurs the phrase "eternal nomos" (that a captured city belongs to the captors).

²Polit. 295 e.

³681 a, b.

⁴Cf. Ep. vii. 325 c.

⁵Laws 838 b.

⁶Polit. 296 c.

⁷Polit. 299 c.

⁸Rep. 563 d, describing democracy.

⁹Laws 793 a sq.

What we are describing are usually called unwritten nomima and the so-called ancestral nomoi are similar.--We should neither speak of these as nomoi nor refrain from mentioning them. They are the bonds of the whole state, coming between the written and those about to be written. They are ancient nomima which, being correctly ordered and made habitual, include and protect written nomoi, but if they go beyond that which is fair (kalos) they may produce a general ruin of the structure of the state, being as it were its prop. Thus, in building a new state everything must be used, nomoi, ethē, and practices, because with these a city is held together, and they are mutually dependent. There are many nomima which are considered, "small" which "overflow" and make the nomoi greater.¹

In Aristotle some interesting remarks on the nature of nomos occur in the first book of the Rhetoric, where, in spite of a certain contradiction, there is given a significant description of unwritten nomos. "Nomos is of two kinds, one particular and the other common, particular or private nomos being that according to which, written, men are governed, while common nomos consists of 'unwritten things' which appear to be agreed upon by all."² In 1. 13. 2, however, this distinction is not maintained.³

By nomos I mean the particular and the common, the particular being that appointed for each group with reference to themselves, and divided into unwritten and written, while common nomos is the nomos "in accordance with physis." For there is, as almost all men suppose, a justice and injustice "common by physis," not dependent on any agreement or pact as in Sophocles' Antigone, "it is not of to-day or yesterday," etc., and in Euripides' remark about the killing of a living creature, that "the nomimon of all things extends through heaven and earth," and in the Messenian oration of Alcidas.

Here the unwritten nomos is a sub-division of particular nomos.

In the same chapter we read⁴ that there are two kinds of justice and injustice, written and unwritten, and two classes of the unwritten, those things which show an extraordinary degree of goodness or vice and which result in praise or blame, and "things which supplement the deficiencies of the particular and written nomos," for the justice which completes the written nomos is equity. When legislators have intentionally or unintentionally left a point undetermined it is necessary to have recourse to equity, to look not to the nomos, but to the legislator and his

¹Cf. also the Polit. 295 b.

²1. 10. 3.

³See Cope's edition of the Rhetoric, and Hirzel, "Ἀγραφὸς νόμος.

⁴Sec. 11 sq.

purpose,¹ to employ the arbitrator whose guide is equity rather than the judge whose guide is the nomos.

In i. 15. 3 some practical advice is offered to the advocate concerning the written and unwritten nomos. If the written nomos is unfavorable to the case, "one must use the common nomos and equity on the ground that they are more just," maintaining that the juror ought not to hold too closely to the letter of the nomos, since equity and the common nomos are constant and never change, for they are according to physis, while written nomoi change often. (Here follows the quotation from the Antigone.) He must maintain that, since the just is true and helpful, a written nomos which does not "perform the function of the nomos" should not be observed and that it is the part "of the better man" to obey the unwritten rather than the written nomoi. Ambiguity or inconsistency in nomoi, or changed circumstances, may also aid the advocate in his pleading, but if the written nomos is favorable to the case he must argue for obedience to it, and insist that seeking to be "wiser than the nomoi" is forbidden "by nomoi that are commendable."

In spite of the sentiment expressed in this practical advice it will be evident that Aristotle considers particular nomos, the nomos of a particular people, to be something more than written nomos and that in this he gives expression to an idea frequently found in Greek literature. This is clear also from a phrase in the Politics² where, in discussing democracy and its preservation, Aristotle says that such nomoi, both unwritten and written, should be enacted as will "embrace especially the things which save constitutions."

The words ethos and êthos are sometimes employed with a meaning similar to that of unwritten nomos; e.g., in 1324 b 2: "Among other races there are many such practices, some embodied in nomoi and others in ethê," and in 1292 b 13, where "according to nomoi" is contrasted with "through êthos." In one instance³ it is even stated that "nomoi in accordance with ethê are more sovereign and concerned with more sovereign things than nomoi in writing." In Rhet. i. 14. 7 where the magnitude of crimes is under discussion it is asserted that a crime is greater if it is especially shameful, or if the victim has aided the criminal, or

¹Sec. 17.

²1320 a 1.

³1287 b 7.

if it is "contrary to unwritten justice" which does not exert external compulsion while the written does, and that it is the mark of a better man to be just without compulsion. From another point of view, the argument continues, it is a greater crime if it is contrary to written enactments since it may be claimed that the culprit would not hesitate to act criminally where there is no penalty rixed (i.e., act contrary to unwritten nomos) if he has acted contrary to written enactments. A further reference occurs in the discussion of contracts,¹ where we read that a contract may be contrary to some nomos, "either of those written or of the common nomoi."

Nomos and Pan-Hellenism; Universal Nomos

Related to unwritten nomos and common nomos is the nomos "of the Greeks"² and the nomos "of all men." Early expressions of the former occur in Pindar,³ "in the nomos of the Pan-Hellenes" and in Aeschylus,⁴ "by the nomoi of the Greeks." Herodotus also employs similar language, "by Greek nomaia,"⁵ "to sin against the common nomima of Greeks,"⁶ "according to the nomoi of the Greeks,"⁷ while in Thucydides are the phrases, "according to the nomoi of Greeks,"⁸ "nomima which the rest of Hellas holds,"⁹ and "the nomos for the Hellenes."¹⁰ Aristophanes has "by the nomos of Greeks" (of language usage),¹¹ and Lysias "Greek nomos."¹²

It is Euripides, however, who furnishes the most interesting data for in this author not a few examples of nomos refer to the two main groups of human beings, Greeks and barbarians. "The

¹1. 15. 25.

²Cf. E. W. G. Wachsmuth, Jus gentium quale obtinuerit apud Graecos ante bellorum cum Persis gestorum initium (Keil, 1822); Henri Weil, "L'Illiade et le droit des gens la vieille grèce," Etudes sur l'antiquité grecque (Paris, 1900), pp. 183-92; Th. Sorgenfrey, De vestigiis iuris gentium Homericis (Leipzig, 1871); Anton Henrik Raeder, L'arbitrage international chez les Hellènes (New York: G. P. Putnam's Sons, 1912); Coleman Phillipson, The International Law and Custom of Ancient Greece and Rome (London: Macmillan and Co., 1911); Marcus Niebuhr Tod, International Arbitration amongst the Greeks (Oxford: The Clarendon Press, 1913).

³Is. 11. 38.

⁴Sup. 220.

⁵11. 9.

⁶111. 59.

⁷1v. 78.

⁸1. 40, 41.

⁹1. 77.

¹⁰1v. 98.

¹¹Ach. 772.

¹²11. 9.

nomoi are different," says Dionysus,¹ "even though in some things barbarians may be superior," and this consciousness of a difference is expressed frequently; e.g., "according to barbarian nomoi,"² "in barbarian nomoi,"³ and in many references to Greek nomoi; e.g., "there is a nomos for the Greeks,"⁴ "by the nomos of the Greeks."⁵ In Alc. 683 Pheres argues that he has not received a nomos, "either ancestral or Greek," that a father should die for his children, while in Troad. 266 the word thesmion is used along with nomos: "What nomos or thesmion of the Greeks is this?" In one context⁶ barbarian and Greek nomoi are both said to be similar in that base actions bring reproach among barbarians too. However, the scorn of foreign ways is evident in Jason's speech to Medea⁷ where he says, "You now dwell in a Greek land instead of a barbarian and learn dike and how to use nomoi instead of force." A similar expression occurs in And. 176 where Hermione declares to Andromache, "You bear children even to your husband's murderer. Such are barbarians, such their incestuous unions from which no nomos restrains them. Bring not those things among Greeks."⁸

This race consciousness is also seen in the phrases, "the nomos of the Pan-Hellenes,"⁹ referring here to burial of the dead, and the "common nomoi of Hellas,"¹⁰ where reverence for them is joined with honor of gods and respect for parents to form three virtues.¹¹

From here it is, of course, only a step to the conception of the nomos "of all men." Thus Aeschylus¹² has "as it is nomos for mortals"; Herodotus¹³ "that which is current (νομιζόμενον) among all men," and¹⁴ "the nomima of all men," with reference to the sanctity of heralds; Sophocles¹⁵ "as it is nomos for all";

¹Bacch. 484.

²Hel. 800.

³Hel. 1258.

⁴Hel. 1240.

⁵Hel. 156; cf. frag. 282; Hec. 1246; Her. 1010.

⁶And. 243.

⁷Med. 538.

⁸Cf. Harold Baker Dunkel, Panhellenism in Greek Tragedy (Ph. D. dissertation, University of Chicago, 1937).

⁹Supp. 526. 671.

¹⁰Frag. 853.

¹¹In Orest. 495 the common nomos of Greeks expresses "due legal action" in contrast to taking the law into one's own hands, the reference being to Orestes' murder of his father.

¹²Ch. 93.

¹³vii. 2.

¹⁴vii. 136.

¹⁵O. C. 168.

Thucydides¹ "it is correct to resist an enemy according to the nomos established for all"; Antiphon² "the nomima of mankind," Isocrates³ "common nomoi of all," and⁴ "the nomos which all constantly use, not as being founded on human physis but as being appointed by divine power"; Demosthenes⁵ "a nomos need not be written for there is a common nomos of all men"; Heraclitus⁶ "all human nomoi are nourished by one, the divine."

In Euripides⁷ also from the idea of pan-hellenic nomos comes the transition to the conception of the nomoi of mankind. Thus Odysseus argues⁸ that the nomos for mortals is to welcome strangers, not devour them, the contrast being between the primitive and the civilized; in Supp. 378, "not to stain the nomoi of mortals" refers to burial; in Hipp. 91, hatred of what is exclusive is a "nomos for mortals," while in Hec. 291, there is an "equal nomos" to free and slave alike, with reference to the shedding of blood.⁹

¹iii. 56.

²iv. a 2.

³Call. 74. Cf. Josef Kessler, Isocrates und die panhellenische Idee (Paderborn, 1911); S. B. Kongeas, H IAEA THZ KOINONIAZ TON EGONON HAPA TOIZ ELLAHEI (Athens, 1928); Johannes Muhl, Die politischen Ideen des Isocrates (Diss., Wortzburg, 1917).

⁴Panath. 169.

⁵xxiii. 61.

⁶Frag. 114.

⁷Cf. Schenkl, Die politische Gedanken des Euripides.

⁸Cyc. 299.

⁹Cf. also Med. 812; frag. 388.

CHAPTER VI

THE FUNCTION OF NOMOS IN THE STATE, WITH SPECIAL REFERENCE TO PLATO, ARISTOTLE, AND XENOPHON

The impressive pronouncements of every class of writer in Greek literature concerning nomos in the state form by far the largest and by far the most fascinating part of the extant material on the subject.

The present study will therefore be concluded by a survey of some of these statements with special reference to Plato, Aristotle, and Xenophon.

From an early period both favorable and critical opinions are expressed. Thus Democritus¹ is said to have declared that nomoi were "an evil intention," and that the wise man should not obey them but live in a free manner. Frag. 47 and frag. 248, on the other hand, state that "it is due and right (kosmion) to obey nomos and the ruler and the wiser" and that "the nomos desires to benefit the life of men and can do so when they themselves desire to be benefited."²

Similar to this latter remark of Democritus are the statements of Heracleitus,³ "A people should fight on behalf of the nomos as for the wall,"⁴ and, "Intelligence is common to all. Those who speak intelligently should hold to this characteristic as a city does to nomos, and much more so, since all human nomoi are nourished by one, the divine. It has as much power as it desires"⁵

¹V. Diels, sec. 383.

²The contradiction may be due to the fragmentary condition of our sources.

³Cf. Jaeger, Paideia, I, 154; J. A. K. Thomson, Greeks and Barbarians (London, 1921), pp. 82 sq.

⁴Frag. 44.

⁵Frag. 114. In this connection the reported words of Periander (Diels, sec. 524) are worth noting: "Make use of old nomoi and new sauces."

From Gorgias comes several expressions: "Correctness of argumentation is superior to exactitude of nomos, and the most divine and common nomos is to say the right thing at the right time";¹ "the noble, judged so by the nomos."² Written nomoi as "guardians of the just"³ are mentioned along with the art of war, writing, number, weights and measures, dice (*sic*), as civilizing forces in the life of man making it resourceful instead of helpless.

Critias offers two examples, one already quoted,⁴ "A good character (*tropos*) is more secure than a nomos," and,⁵ in a description of the early life of man, the statement that nomoi as chastisers, and the fear of gods, were invented together to prevent secret crime with the result that the divinity "quenched" lawlessness (*anomia*) with nomoi.

Anonymous Iamblich⁶ speaks of protection for the nomoi as that which settles and holds together cities and men. Power which comes from greed should not be considered a virtue nor should obedience to the nomoi be considered cowardice. Society is dependent upon the sovereignty of nomos and justice. It may be thought that the superman need not be under nomos but even the superman can only exist "by being an ally to the nomoi and the just," for the multitude, on account of its orderliness (*eunomia*), could surpass any one individual, so that power itself is preserved through the nomos. (There follows a lengthy comparison of *anomia* and *eunomia*.) Men cannot live without nomoi and dike;⁷ if nomos and dike leave the people one man must take over the guardianship of them. Adamantine must be the man who will destroy dike or abolish the nomos common and helpful to all.

In Sophocles the necessity of fear if nomoi are to be obeyed is expressed in *Ai.* 1073, "Never, in a state, are nomoi well-observed where fear does not exist."

Euripides, here as in other respects, displays his ability to express different points of view. The importance and power of nomoi in human life are frequently suggested by such phrases

¹Diels, sec. 557.

²Frag. 11, sec. 6.

³Frag. 11, sec. 30.

⁴P. 27 under Euripides, where Nauck places it.

⁵Frag. 25.

⁶Diels, sec. 631 sq.

⁷Sec. 635.

as, "the nomos restrains";¹ "the nomos does not allow";² "had he held fast to the nomos he would have been pious";³ "I defend the nomos";⁴ "he surpasses the nomoi by anomia";⁵ "preservation of nomoi is the bond of states."⁶ "Not desiring to be before the nomoi" is stated⁷ to be a characteristic of Greeks just as respect for kin is; "not outside the nomoi" is the plea of Cadmus to Pentheus;⁸ the civilizing force of nomoi is expressed, though with scorn, by the Cyclops' reference to "those who appointed nomoi, adorning the life of men,"⁹ and the point of view is expressed less cynically in frag. 252: "from justice come nomoi which bring all great benefits to mortals." In a short chorus¹⁰ it is said that "nomoi define even necessary relationships," making the bitterest enemies friends and turning friends into enemies (power of tradition being perhaps meant).

On the other hand there occur also expressions of disobedience to, or contempt for, nomos. Hecabe remarks that "no man is free; he is either a slave to fortune or the city multitude, or writings of nomoi prevent him from using his tropoi according to his desire."¹¹ The old servant of the Ion¹² also expresses a popular sentiment when he claims that it is very well for the prosperous to honor piety but that when one wants to harm his enemies "no nomos stands in the way," a point of view found also in frag. inc. 1091: "It is nomos for one to harm one's foe when caught." In frag. inc. 1049 nomos is even opposed to dike: "If I saw an unjust man at the altar I should let the nomos go and without a fear of the gods drag him to dike, for an evil man should suffer evil," while a frag.¹³ seems to argue that there are situations in which a disregard of nomos is forced on one: "I declare that disregard of nomos in the midst of dangers prevails over force."

However, the phrase of Iph. T.,¹⁴ "it is necessary to respect the appointed nomos," expresses the general sentiment towards nomos, one of reverence and obedience to a principle which exercises an all-pervading influence on the life of the individual or

¹Her. 963.

²H. F. 1361.

³Orest. 503.

⁴Orest. 523.

⁵Iph. A. 1095.

⁶Supp. 313.

⁷Orest. 487.

⁸Bacch. 331.

⁹Cyc. 338.

¹⁰Hec. 849.

¹¹Hec. 866.

¹²1047.

¹³433.

¹⁴1189.

group. "It is never right to think one is more powerful than the nomoi," sings the chorus of Bacch. 891, "for it is a belief easy to obtain that whatever is divine or nomimon by long lapse of time, and is appointed by physis, is supreme."

Other interesting references to practical ethics or politics are also found in Euripides. Thus frag. 597 declares that "a good tropos is more secure than a nomos because no oration can destroy character whereas a speaker often rends and mars a nomos." The political significance is seen in some strong remarks concerning tyranny where nomos does not exist at all. A fragment of the Antigone¹ contains the following: "It is not seemly for a tyrant to rule and be nomos and it is folly to wish to rule, alone, over equals, without nomoi." Similar vigorous words must have sounded well coming from Theseus: "Nothing is more baneful to a city than a tyrant. In the first place there are no common nomoi but one man, possessing the nomos, holds sway by himself,"² and the speaker goes on to say that when the nomoi are written poor and rich alike have "equal dike."³

Herodotus' "philosophy" of nomos has already been examined, but one might include here the remark of Demaratus to Xerxes: "Poverty has always been our fellow-dweller while arete is acquired, formed by wisdom and strong nomos."⁴ Virtue as the work of wisdom and nomos is political philosophy not equalled in depth until Plato.⁵

Thucydides, philosophical historian, was keenly alive to the significance of nomos. With reference to respect for nomoi, the Spartans,⁶ defending their character, use the words, "We are wise because we have too little education to scorn the nomoi and too much self-control to disobey them." In this context one might also cite Cleon's remarks⁷ concerning democracy, "Absence of fixed

¹Nauck 172.

²Supp. 430.

³In Iph. A. 694 nomos and time are spoken of as bringing relief from sorrow (where nomos seems to mean "becoming accustomed to the sorrow"), while in frag. 292, "we cure them by the nomos" probably means "by medical rule." The many other uses are similar to those indicated above and need not be mentioned in detail.

⁴vii. 102.

⁵It is Spartan arete, of course, on the field of battle.

⁶i. 84.

⁷iii. 37.

policy is the most serious aspect of the situation and our ignorance of the fact that a state is stronger when it uses inferior nomoi without changing them than when it possesses good nomoi without enforcement, and that simple loyalty is better than clever lack of restraint, for the sophisticated always desire to appear wiser than the nomoi whereas those who are less learned than the nomoi usually manage affairs correctly."¹

What a great national disaster will do to nomoi is seen in the account of the plague. "All the nomoi concerning burial were thrown into confusion. Nor was this all; restraint now existed no longer, the pleasure of the moment became men's aim; no fear of gods or nomos of men held them back."²

Nor is disease in the polis a less powerful solvent of nomoi. The account of stasis, civil strife, at Corcyra shows what happens when a state is torn by this malady, for the intrigues which develop do not exist "for the sake of the aid which comes from the established nomoi but, through ambition, for their overthrow, while the bond of union is not dependent for its strength on the divine nomos but rather on a joint attempt to do wrong."³

Human physis is wont to rebel against nomos and now, gaining control over the nomoi it displays unrestrained passion, disregard for justice and enmity towards what is superior. In such a situation men destroy the common nomoi "about such things" from which they may hope for salvation in the time of need.⁴

The orators, of course, have much to say concerning nomos.⁵ In Antiphon the influence of nomoi, along with decrees (psephismata) in the life of the state is seen in iii a 1: "nomos and psephismata which control the whole politeia."⁶ A passage found

¹In iii. 62 occurs a significant reference to tyranny as the negation of nomoi and moderate government. "Our city," declare the Thebans speaking of the time of the Persian invasion, "possessed neither an oligarchy nor a democracy, but that which is most opposed to nomoi and moderation, and nearest to tyranny, namely, a clique of a few individuals. Therefore we should not be blamed for our mistakes which were committed when we were 'without nomoi.'"

²ii. 53.

³iii. 82.

⁴iii. 84.

⁵Cf. Burle, La notion de droit naturel dans l'antiquité grecque, chap. vii.

⁶For the relation of psephisma to nomos see Henri Francotte, "Loi et décret dans le droit public des Grecs," Musée Belge, VIII (1904), 329-38; Frank B. Tarbell, "The Relation of ψηφισματα

twice¹ praises the nomoi concerning murder as being

by general agreement fairest and most holy. They are the oldest in this land and remain the same always with reference to the same things, which is the greatest sign of nomoi well-constituted; for time and experience instruct men concerning things which are deficient. Hence one should not judge the nomoi from the speeches of an accuser but judge the speeches of an accuser from the nomoi.

In Lysias the relation between nomos and democracy is expressed in an interesting section of the funeral oration.²

Our ancestors were autochthonous, not outsiders. They were the first to abolish oligarchy (dynasties) and set up a democracy believing that liberty was the greatest guarantee of harmony. With common hopes and free spirits they honoured the good and punished the evil according to nomos, considering that it was the function of animals to rule each other by force, but that human beings should define the just by nomos, persuade by logos, serve (both nomos and logos) in reality, being ruled by nomos and instructed by logos.³

In Isocrates nomoi as indicative of civilization and community life are described in Paneg. 39: "Athens was the first to set up nomoi and a politeia," and (in sec. 124 of the same speech), "they first founded a polis and used nomoi." Indeed, "nomoi and politeia are the creation of men noble and worthy."⁴ The power of speech and persuasion are responsible for this and mark off men from the animals: "We are inferior to animals in many things but because the power of persuasion is implanted in us we have not only avoided the life of animals, but coming together we founded cities, and appointed nomoi, and discovered the arts."⁵ "It is logos which 'legislated' concerning just and unjust, noble and base."⁶ "Nomoi should harmonize with the politeia even as

to νόμος at Athens in Fifth and Fourth Cent. B.C.," AJP, X (1889), 79 sq.; Ulrich Kahrstedt, Griechisches Staatsrecht (Göttingen: Vandenhoeck and Ruprecht, 1922), I, 86, 273. For unwritten nomima and psephismata see Burle, op. cit., chap. xvii.

¹v. 14 and vi. 2.

²ii. 19.

³Cf. Lysurgus iv where it is stated that the three most important things which preserve the democracy and the happiness of the state are "the arrangement of the nomoi, the vote of the jury, and the judgment which hands over wrongdoing to these," while in 142 nomoi are mentioned along with sacrificial rites, the agora, and the politeia; also Hyperides, "in a democracy the nomoi must be sovereign" (iii. 5); "flying for refuge to the nomoi" (iii. 10); "the voice of nomos sovereign" (instead of the rule of one man, vi. 25); "the safety of the citizens rests on confidence in the nomoi" (vi. 25).

⁴Bus. 32.

⁵Nic. Cyp. 6.

⁶Antid. 254.

the orators should, for it is the soul of the state."¹

The significance of nomoi in the life of man is also seen in Nic. 3, "There are many things which educate private citizens, absence of luxury, the necessity of work, the nomoi according to which the various groups live, freedom of speech, and, lastly, the precepts of poets."

Statements regarding the nature of good nomoi are also found. Thus: "The wisest and best men ruled--with the result that in a few days they saw the nomoi written down, not like those of the present in which confusion and contradiction occur, but nomoi few in number and easy to understand, just, useful, and consistent, while those concerning common activities were given more attention than those concerning private contracts, as should be the case in well-regulated communities."² Similar in sentiment is the advice given in Nic. 17 where it is declared that kings' judgment concerning matters of justice should be constant like well-appointed nomoi. Nomoi should not be too numerous or too exact³ for it is not written codes that advance virtue, but rather the habits of every day; in fact a large number of nomoi drawn up in great detail is proof that a state is badly governed. The truly noble do not need many written enactments.⁴ We praise old nomoi and new speeches.⁵ Even judges should obey nomoi rather than use their own sense of equity.⁶

In Aeschines some significant statements concerning the relation of nomoi to democracy are found. In iii. 196 democracy is spoken of as preserved "by the gods and the nomoi," while in i. 5, 6 occurs the following:

Of the three forms of government, tyranny, oligarchy, and democracy, the two former are conducted according to the tropoi of the rulers, but democracy according to nomoi. In a democracy it is the nomoi which preserve the politeia and the persons of the citizens, while the tyrant and the oligarch rule by suspicion and armed forces, and must therefore guard against revolution by the nomos of force [the phrase "by the nomos of hands" is employed] while

¹Areop. 14 sq.

In one instance the civic life and nomoi are contrasted with Philip's freedom of action (Phil. 14), "I saw that other men of character were living 'under society and nomoi,' unable to do anything except what was commanded while you could send ambassadors anywhere," etc. This point of view is, however, rare.

²Panath. 144.

³Areop. 39 sq.

⁴Paneg. 78.

⁵Antid. 82.

⁶Areop. 33.

those democratically governed, possessing an equal and lawful (ennomos) politeia, should resist those who speak or live contrary to the nomoi. We must set up nomoi beneficial to the politeia, and obey them when they are enacted.¹

In his remarks concerning nomos Demosthenes might almost be ranked, as a political theorist, with Plato and Aristotle.

A passage from Aristogiton ii² might serve as a text for a survey of nomos in Demosthenes.

You will most clearly realize what a benefit comes from obedience to the established nomoi, and what ills from disregard and disobedience if you place before your eyes the blessings from the nomoi, and the results of lawlessness. From the latter come madness, lack of control, greed, while nomoi perform the tasks of wisdom, moderation, and justice. The proof is that the best-governed states are those which have had the best legislators. As physical ills are cured by the discoveries of physicians, so soul-madness is expelled by the intelligence of legislators. Altogether there is nothing revered or noble which does not share in nomos since the whole kosmos and divine things and the so-called horai (seasons) are seen to be appointed by nomos and taxis (arrangement).

The sentiment expressed here is no isolated example in Demosthenes. The revered and the noble, reason, freedom and the constitution are "companions" of nomos throughout, as will be evident from the following statements and phrases: "All nomoi are set up for the sake of justice and the protection of good men";³ "to be ruled on an equal basis in freedom and nomoi";⁴ "nomoi and the politeia";⁵ "by reason (logos) along with the nomoi";⁶ "ruled by nomoi";⁷ "to live by nomoi";⁸ "to live by nomoi, free";⁹ "power belongs to only a few, but the nomoi to all";¹⁰ "it is important that they should be good, for bad nomoi harm even states which seem to be firmly established";¹¹ "nomoi and freedom stand opposed to the king or tyrant";¹² a man like Philiscus of Abydos acted as a man would who "was brought up without nomoi and the blessings of a politeia and then gained power"; a nomos need not be written to demand obedience, for "there is the common nomos of all men concerning some matters as resistance to

¹Cf. also iii. 6. ²26, 27. ³Ep. iii. 25.

⁴x. 4. ⁵xix. 283. ⁶xx. 109. ⁷xxiii. 138.

⁸xxi. 150. ⁹xxiii. 139. ¹⁰xxi. 45. ¹¹xx. 49.

¹²vi. 25.

the seizure of one's property,"¹ just as there are the properties of physis.²

One of the most eloquent eulogies of nomos in Greek literature is found in Or. xxiv (Timocrates).

No one would claim that anything is more responsible than the nomoi for the state's blessings, for her democratic constitution, her freedom,³ And it is you, the many, who are the only just and firm protection of the nomoi.⁴ The reason why nomos differs from oligarchy and why those who desire to be governed by nomos are considered wise and good while those under oligarchy are considered cowards and slaves is that in an oligarchy any person may nullify what has been done, and make any decision about the future, whereas the nomoi give instructions about the future, being set up with the conviction that they will benefit those who use them.⁵ But nomoi should not be frequently altered, and the example of the Locrians should be followed,⁶ who consider that obedience should be rendered to the old-established nomoi and, contrary to the Athenian manner, that new nomoi should not be introduced to serve private interest. The proposer of a new nomos puts his head in a noose and withdraws it only if the nomos is passed. Nomoi are the preservers of the state. Those who are wise consider nomoi as the tropoi of the state.⁷ Therefore they should be as excellent as possible and those who harm them should be punished. Solon was right when he argued that, just as money is the currency created for the use of private citizens, so nomoi are the currency (nomisma) of the state and must not be debased or counterfeited. A state might escape (financial) ruin by devaluation, but not (general ruin) by using debased nomoi, and allowing the existing ones to be destroyed. The greatness or insignificance of a state depends on the nomoi which punish the wrong and honour the good. What preserves and holds together our own state, her wealth of war-vessels, troops, cavalry, revenues? The nomoi.⁸

Similar language is employed also in Or. xxv.⁹ "All should obey nomos for many reasons and especially because every nomos is a discovery and gift of the gods, a precept of wise men, a corrective of crimes deliberate and involuntary, a common agreement of the state, according to which it behooves all in the state to live."¹⁰

All nomoi are set up for two reasons, to prevent men

¹xxiii. 61; cf. xxiii. 85, and "unwritten nomima," xxiii. 70.

²xlv. 53, mentioned along with "written nomoi."

³Sec. 5. ⁴37. ⁵75, 76. ⁶39 sq. ⁷210.

⁸216. ⁹15 sq.

¹⁰Cf. Digest of Justinian, Preamble, where this is quoted with "God" instead of "gods" the only difference.

from acting unjustly and, by punishing those who transgress, to make men better. The defendant attempts to destroy all the order (kosmos) of the city, and the nomoi. Since, then, the nomoi, next to the gods, admittedly preserve the state, you should take appropriate measures. Obedience to the nomoi is a "contribution, political and common" while the defaulter deprives you of many things noble, and revered, and great, for all things that are revered and noble and which adorn and preserve the state, moderation, reverence of the young for parents and the aged, good order, prevail over the base because of the aid given by the nomoi. If everyone regarded his own will as nomos, could a state be ruled? No, for by the nomoi all things are ordered. There are even altars, among all men, of dike and eunomia and reverence.¹ There is even a nomos of physis for both men and animals, to love their parents.² Whatever nomos each man possesses by physis toward his fellow men should be applied to him by them.³

There are many other expressions which help to round out the conception of nomos in Demosthenes; e.g., "the nomoi are mild";⁴ "nomoi opposed to one another";⁵ "where there are no nomoi concerning a particular situation judgment should be rendered according to the justest opinion";⁶ "a psephisma may not be more authoritative than a nomos";⁷ "a nomos should not be set up against an individual";⁸ "the nomoi are common to all citizens";⁹ "the nomoi, the cause of the state's blessings";¹⁰ "nomoi governing public affairs should be severe, while those which have to do with private matters should be mild."¹¹

¹35. ²65. ³81. ⁴xxiv. 69. ⁵xx. 91.

⁶xx. 118; xxxix. 39. ⁷xxiii. 218.

⁸xxiii. 86.

The creation of nomoi or their alteration is a difficult subject which lies outside the scope of the present study and may be touched upon only briefly here. Some of the main facts are: 1. The yearly debate on the advisability of altering the nomoi; 2. the permission allowed any private citizen, after the ecclesia had voted in favor of revision, to suggest amendments; 3. the choice of nomothetai and of "advocates" to defend the nomoi which were considered defective.

If a nomos were passed which proved detrimental to the country the proposer might, within the period of a year, be impeached on a γραφή παρανόμων, i.e., for having brought in legislation harmful to the state or contrary to existing legislation.

Every year also the existing code was examined by the Thesmothetai to determine whether there were contradictions. If such were found the assembly was summoned to appoint nomothetai.

For the whole question cf. Gustav Gilbert, The Constitutional Antiquities of Sparta and Athens, trans. E. J. Brooks and T. Nicklin (London: S. Sonnenschein & Co., 1895), pp. 299 sq.

⁹xxiv. 116.

¹⁰xxiv. 155.

¹¹xxiv. 193.

Plato on Nomos

"When I observed these events, "writes Plato in the seventh epistle, speaking of the death of Socrates and the political conditions of the time,

and saw those who were engaged in political affairs, and contemplated the nomoi and ethē, the more I studied them and the older I became the more difficult it seemed to me to manage political matters. One could accomplish nothing without loyal friends who were hard to find because the state was no longer ruled after the ethē and practices of our fathers, while the letter and ethē of the nomoi were being corrupted with extraordinary speed. My desire for public life therefore waned. I felt that in the states of the present day their nomoi were in a deplorable condition, unless planning, accompanied by good fortune, were to bring a change.

That is, until philosophers are kings the nomoi of men will not be good.

The vivid account in Book iii of the Laws mentions nomoi along with "cities, constitutions, and the arts," in a word, as an integral part of civilization. It was a slow evolution after the deluge. The arts had to be recovered; life was very simple, but therefore good. Men hardly needed lawgivers "because they had no letters but lived according to custom and the so-called ancestral nomoi."¹ The monarchies which grew from such a social condition were formed from single families, each family with private nomoi,² and, as each man likes his own nomoi best, we have the beginning of legislation (nomothesia), when arbiters are chosen to examine the various nomima and choose the best.

Of the position of nomos in the life of the state three main accounts are given by Plato, in the Republic, the Politicus, and the Laws.

In the Republic nomos reigns supreme. The aim of the legislator in establishing nomoi "on a clean slate"³ is unity,⁴ and both unity and the nomoi must be maintained. Only those who can guard the nomoi may be guardians⁵ and the guardians themselves must obey the nomoi.⁶ This does not mean that there should be nomoi about all things (i.e., written). If the most important matters are provided for, e.g., if education is in accordance with

¹680 a.

²681 b.

³501 a.

⁴462 a.

⁵484 b.

⁶458 c.

nomos (ennomos), the smaller nomima of belief and action will look after themselves. In fact it is foolish to regulate formally matters such as dress or manners.¹

But nomos rules over all. It is an ally of everyone in the state and desires that all be ruled by that which is divine and wise.² It is the father of all, from which men run when the state life begins to degenerate³ until, under democracy, men care for neither written nor unwritten nomoi,⁴ while the tyrant shuns both nomos and logos.⁵ A man who deceives about noble and good and just nomima is committing a crime like homicide,⁶ because nomos inculcates virtue, as, for example, bravery, which is the "preservation of that opinion, instilled by nomos through education, concerning what things are fearful and what are not."⁷ Mere animal or slave courage is not nomimon.⁸ Every effort must be made to prevent changes in education from creeping in, and since eunomia is brought about by "music" in education,⁹ a change in music is followed by a change in state nomoi.¹⁰ Lawlessness will then result and there will be lawless pleasures¹¹ instead of nomos and logos;¹² the lawless visions in sleep¹³ will become a waking reality in the man who has deserted logos, everything will be equal before the nomos" (isonomia), and free,¹⁴ and the fierce and lawless desires that exist in every man will break forth,¹⁵ with anarchy and anomia as the result.

The Politicus offers an interesting contradiction to the Republic in its treatment of nomos. In the section of this dialogue (Politicus) which treats of the forms of government, nomos and anomia are taken, along with poverty and wealth, the voluntary and involuntary, as criteria. There are five forms, royalty, tyranny, aristocracy, oligarchy, and democracy, the last one of which retains the name whether it respects laws (grammata) or not.¹⁶ But whether the government be rich or poor, or rule over willing or unwilling subjects, with or without nomoi,¹⁷ it must possess true knowledge to be a true form, and it must use that knowledge for the good of the state.¹⁸ This statement of ruling

¹ 425 b.	² 590 e.	³ 548 b.	⁴ 563 d.	⁵ 587 c.
⁶ 451 a.	⁷ 429 c.	⁸ 430 b.	⁹ 425 a.	¹⁰ 424 c.
¹¹ 571 b.	¹² 607 a.	¹³ 572 a.		
¹⁴ 561 e, 563 b, 572 d, 572 e.			¹⁵ 572 b.	¹⁶ 292 a.
¹⁷ 293 c sq.		¹⁸ 293 d.		

without nomoi calls for further elaboration and it is asserted that it is best, not that nomoi should rule, but rather a king who has wisdom.¹ Legislation is the affair of royalty,² because the nomos cannot ordain to all at once what is best and most just. Human life is too complicated, and no art can lay down a rule for all time. But this is just what the nomos seeks to do; it is like a stubborn ignorant man insisting on having its own way³ in spite of changing conditions. Since nomos, then, is not the most correct thing, why need we legislate? Because some general rule is necessary owing to the inability of one man to manage all details. So he will appoint nomos both in writings and in unwritten traditional ethē.⁴ But no one with knowledge would, except under necessity, allow the restrictions of these written nomoi to bind him.⁵ Where necessary he will alter these enactments,⁶ and the common remark has reason, that if anyone knows how the old nomoi may be improved he should make better ones, after persuasion.⁷ But a good physician who forces a patient to act contrary to written tradition cannot be accused of injustice.⁸ A pilot makes his art a nomos,⁹ and in the same way there may be a true polity where art is superior to nomoi and which may be imitated in writing by others.¹⁰ But rigorous adherence to the nomoi is a second best.¹¹ Just as the pilot and doctor must exercise their arts through knowledge applied to the various situations which arise, and not according to "writings," so must the statesman who has knowledge act contrary to written precepts. But where all is regulated by written enactments it would be a greater mistake to go contrary to the nomoi, which are the result of much experience,¹² and which wise advisers have persuaded the people to enact, than to obey the written code blindly. The second best is to have everybody obey them for they would be copies of truth, drawn up as well as possible "by those who know." However, an individual or state would be acting according to the Statesman if he went against the nomoi with something better in view,¹³ and if knowledge accompanied such an act it would be an imitation of the truth. But, since few men can acquire knowledge of any art, the royal art can never be acquired by wealth or num-

¹ 294 a.	² 294 a.	³ 294 b.	⁴ 295 a.	⁵ 295 b.
⁶ 295 d sq.		⁷ 296 a.	⁸ 296 c.	⁹ 297 a.
¹⁰ 297 d.	¹¹ 297 e.	¹² 300 e.	¹³ 300 d.	

bers, and polities inferior to the royal can best function by doing nothing contrary to the written code and ancestral ethē. We have, then, an aristocracy when the rich rule with regard to nomoi; if not, it is an oligarchy. Likewise the individual who rules according to nomoi, whether with knowledge or with opinion, is a king, but a tyrant if he acts contrary to the written enactments through appetite or ignorance rather than through knowledge.¹ But, since there is no one in the state pre-eminent in body and soul, it is necessary to meet together and write codes, trying to imitate the truest form of polity. Little wonder that there are miseries among men when there is nothing more than codes and customs (ethē) and no knowledge.²

Which is the final Platonic view of nomos, that of the Republic or that of the Politicus? Perhaps the contradiction may be explained by considering the Republic as an ideal picture and the Politicus as an attempt to face practical considerations.³ However that may be, the last work of Plato does definitely descend to the practical plane, and in the Laws we have his last word on nomos as well as on many other things.

Here there is no doubt as to the need of nomos. The life of man is a confused one except for "three most important things," fear, nomos, and true reason.⁴ As in the Apology nomos is what makes men better,⁵ so here nomoi should be wise and loving parents;⁶ if they are not, great is their power to save or harm.⁷ Obedience to them is "service to god";⁸ whosoever enslaves them is the greatest enemy of the state.⁹ Without nomoi man would lead the life of an animal;¹⁰ no one is wise enough to be above nomoi,¹¹ and so men must have nomoi. Only true nomos can make possible the best life.¹² Nomos and order bring about the good;¹³ where nomos is weak disaster results;¹⁴ to be secure nomoi must regulate private life as well as public.¹⁵

¹301 c.

²301 e.

³Cf. Paul Shorey, What Plato Said (Chicago: The University of Chicago Press, 1933), pp. 313 sq.; A. E. Taylor, Plato (3rd ed.; London: Methuen & Co., 1929) pp. 401 sq.; Barker, Greek Pol. Theory, pp. 271 sq.

⁴783 a.

⁵24 d.

⁶859 a.

⁷683 b.

⁸762 e.

⁹856 b.

¹⁰874 e.

¹¹875, a further comment on the problem of the Politicus.

¹²817 b.

¹³780 d.

¹⁴715 d.

¹⁵780 a, b.

What should be the aim and character of the law-giver? The answer is given frequently in the Laws. He should have true nomos in his mind.¹ Intelligence is his first prerequisite.² He must know the due measure.³ There are many forms of nomoi, as there are many polities,⁴ but the best polities and nomoi are found when the supreme power is coupled with wisdom and moderation.⁵ The law-giver should aim at that which possesses eternal beauty.⁶ The function of the best nomoi is to create hatred of injustice.⁷ War should not be the aim of nomima,⁸ but they should be created for the sake of the best,⁹ and the best life, not the mere possession of life,¹⁰ and for the sake of all virtue.¹¹ Nomoi are not correct unless they aim at the common good of the whole state;¹² the best are where all things are in common.¹³ Preservation of nomoi is important,¹⁴ but there should be a willing obedience to them.¹⁵ Nomoi exist for the instruction of the good members of society and to deter the bad.¹⁶ The aim is everything, and little wonder that the nomima of states vary according to the end which the law-giver has before him.

There are many other injunctions of a practical nature, such as, that concerning the division of nomoi into three classes;¹⁷ the preamble;¹⁸ the importance of good officers of nomoi.¹⁹ Those who elect should be brought up "in the ðthð of the nomoi";²⁰ time is necessary if nomoi are to be effective;²¹ war and poverty destroy them;²² nomoi concerning divine things should be brought from Delphi;²³ nomoi should be as few as possible.²⁴

However, there are some regions of human life where formal nomoi do not appear advisable, where praise and blame do the educating,²⁵ where, by instruction and precept, regulation may be achieved. In such matters it is a mistake to have nomoi (i.e., formal legislation) because "most people transgress in small matters," and it is a mistake for them to form the habit of breaking the appointed nomoi.²⁶ This border line between precept and nomoi

¹ 836 e, 966 b.	² 688 a.	³ 691 d.	⁴ 714 b.
⁵ 712 a.	⁶ 705 e.	⁷ 862 d.	⁸ 626 a.
¹⁰ 707 d.	¹¹ 630 e.	¹² 715 b.	¹³ 739 b.
¹⁵ 690 c, 700 a.	¹⁶ 880 d.	¹⁷ 697 a.	¹⁸ 719 b.
¹⁹ 751 b; cf. Ep. xi. 359 a.		²⁰ 751 c.	²¹ 752 b.
²² 709 a.	²³ 759 c.	²⁴ 841 a.	²⁵ 730 b, 773 e.
²⁶ 788 a.			

should not be regulated by nomoi, since precept and the unwritten nomoi¹ will serve here, while the countless small nomima may be regulated by a younger generation rather than by the "aged law-giver."²

Education is, of course, a proper field for the exercise of nomos. The Minister of Education should plan a detailed course of action.³ Sound nomima remain firm when no innovations are permitted in children's play;⁴ in fact, amusement also is a fit field for nomos,⁵ even the amusement of the mature,⁶ for almost all speculation about nomoi has to do with the question of pleasures and pains.⁷ Dancing and music brought in by disorderly pleasures are opposed to nomoi.⁸ The poets therefore have a duty to the nomoi⁹ and should compose nothing contrary to the nomima of the state;¹⁰ in fact, "songs are our nomoi."¹¹ Poets ignorant of "the justice of the Muse and the nomimon" are the cause of corruption.¹² Education is the "lead towards right reason indicated by the nomos."

Obedience to nomoi is all important.¹³ Refusal to obey is likened to the nature of the soul which is opposed to "knowledge, opinion, or reason."¹⁴ One of the best nomoi will be that forbidding the youth to enquire into the deficiencies of the nomoi.¹⁵ It is easier to create reverence for old, well-established nomoi which have endured "by some divine good-fortune,"¹⁶ but, when the rulers set a good example, new nomoi may quickly alter the êthê of the state.¹⁷ Extreme danger, as was the war with Persia, may work for obedience,¹⁸ but the "mistress, reverence" also aided to that end.¹⁹ The young should learn by heart the nomoi, for, of all branches of learning, matters pertaining to the nomoi are best able to improve him; otherwise divine and wondrous nomos would not have a name like nous (mind).²⁰ An understanding of them is better than obedience from habit alone,²¹ and therefore amendment should take place after careful deliberation,²² especially when wide-spread change in theological opinions has

¹ 838 b, 841 b.	² 846 b sq.	³ 809 a.
⁴ 792 b.	⁵ 797 a.	⁶ 643 b, 672 a.
⁸ 660 b.	⁹ 656 c.	¹⁰ 801 c.
		¹¹ 799 e.
¹³ The point of view of the <u>Crito</u> again.		¹² 700 d.
¹⁵ 634 d.	¹⁶ 798 a.	¹⁷ 711 b, c.
		¹⁸ 698 c.
²⁰ 657 c; cf. <u>Protag.</u> 326 c.		²¹ 951 b.
		²² 951 b.

taken place; e.g., oaths should be abolished when the people do not believe in the gods.¹

The whole world then, to Plato, feels the influence of nomos. Even Zeus appoints a nomos concerning reverence and justice,² and rules "in nomoi,"³ while⁴ the creator displays to the divine beings the "fated nomoi." "That which we call the common nomos of the state⁵ is the golden and sacred guidance of reason."⁶

¹948 d.

²Protag. 322 d.

³Critias 121 b.

⁴Tim. 41 e.

⁵Laws 645 a.

⁶The Minos may not be from the pen of Plato but its subject matter makes it of considerable interest in the present study.

The question is posed abruptly at the beginning of the dialogue, ὁ νόμος ἡμῖν τί ἐστίν; and the first answer is, τὰ νομιζόμενα. But that is like saying that λόγος is τὰ λεγόμενα. The question is "since νόμος τὰ νομιζόμενα νομίζεται, τίνι ὄντι τῷ νόμῳ νομίζεται;" The answer is δόγμα πόλεως, or δόξα πόλεως. But since οἱ νόμιμοι νόμον νόμιμοι, and since οἱ νόμιμοι are δίκαιοι, then ὁ νόμος is κάλλιστον, but we find that sometimes δόγματα πόλεως are πονηρά, and therefore νόμος is not merely δόγμα πόλεως but χρηστή δόξα. It is therefore true and may be defined as "the discovery of reality," τοῦ ὄντος ἐξεύρησις.

νόμοι differ among men, suggests Socrates, because men cannot all discover τὸ ὄν. Whoever makes a mistake about τὸ ὄν errs concerning τὸ νόμιμον. Men may alter τοὺς νόμους, but if all νόμοι are not the same it is because some men do not have knowledge, because, in the arts, those who know ταῦτα νομίζουσι. πολιτικά συγγράμματα which men call νόμοι are the work of kings and good men who have knowledge and will never change τὰ νόμιμα.

As the good farmer can distribute, διανεῖμαι, seeds, and is a good νομεύς (whose νόμοι and διανομαί are therefore good); as the good νομεύς of musical notes is the good musician who is νομικώτατος in such matters (and similarly with the trainer and the shepherd) so for men's souls the best νόμοι are those of the βασιλεὺς. Of the ancient νόμοι in music Marsyas was good, and Lycurgus was a good νομοθέτης too, whose νόμιμα remain still. He brought them from Crete. (Here follows a eulogy of Minos.) He was νόμιμος himself, a good νομεύς who understood τὸ διανέμειν, the proof of which is that his νόμοι are ἀκίνητοι, because he discovered τὸ ὄν concerning the founding of a city and the care of the soul.

A few of the ὄροι may be quoted before proceeding to Aristotle.

ἀρετή, κοινωνία νόμων δίκαια, ἕξις ποιητικῇ εὐνομίας.
δικαιοσύνη, ἕξις διανεμητικῇ τοῦ κατ' ἀξίαν ἐκάστω, ἕξις ἐν βίῳ νόμου ὑπήκοος, ἕξις ὑπηρετικῇ νόμων.
ἀνδρεία, ἕξις ἐμμενητικῇ νόμου.
νόμος, ἀπόφασις κυρία περὶ ἀμφισβητουμένου πράγματος.
νόμος, δόγμα πλήθους πολιτικῶν οὐκ εἰς τινα χρόνον ἀφωρισμένον.
πολιτεία, κοινωνία πλήθους ἑννομος.
δίκαιον, νόμος τάγμα ποιητικῶν δικαιοσύνης.
ἐορτή, χρόνος ἱερὸς κατὰ νόμους.
βασιλεὺς, ἄρχων κατὰ νόμους ἀνυπεύθυνος.
ἐξουσία, ἐπιτροπὴ νόμου.

Nomos in Aristotle

The importance of nomos in the life of man receives eloquent expression throughout the writings of Aristotle, for "as man when 'completed' is the best of creatures, so he is worst of all when separated from nomos and dike."¹ Indeed, the preservation of the state depends on the nomoi,² and "where nomoi do not rule there is no constitution."³ The corporate life should be regulated "by ethē, philosophy, and the nomoi."⁴

The relation between the nomoi and education is therefore of the greatest importance. The ēthos of the individual must have a leaning towards virtue if a successful training is to be achieved, but something more is necessary as well, for it is difficult to receive a good education without having been nurtured under correct nomoi.⁵ The nurture and practices of the young man should therefore be appointed by nomoi, but we need nomoi for the whole life of man as well, with the compulsion they possess. Men must be guided "according to an intelligence and orderly arrangement possessing force," and since the patria potestas is not enough, we must turn to nomoi which possess "power to force, being logos from wisdom and mind," a constraint which does not appear burdensome when commanding the equitable. Sparta rather than the Cyclops should be imitated in the matter of education which ought to be under state control, and "care exercised in common results from nomoi." In states the nomima and ethē will have authority similar to the commands and ethē of a father in a household. If, then, through nomos we may become virtuous, a person who desires to make men better through discipline must become like a law-giver and understand the art of politics, for "nomoi resemble the works of the art of politics." Something more than a collection of nomoi is necessary to answer the all-important question, "What politeia, employing what nomoi and ethē is best?"⁶

It is the aim, then, of the statesmen to make the citizens

νομοθέτης, ποιητὴν νόμων καθ' οὗς δεῖ πολιτεύεσθαι.
 πόλις, πλῆθος ἀνθρώπων ὑπὸ νόμον τὸν αὐτὸν ὄντων.
 ἀδικία, ἕξις ὑπεροπτική νόμων.
 νομοθετική, ἐπιστήμη ποιητικῆ πόλεως ἀγαθῆς.

¹Pol. 1253 a 33.

²Rhet. 1. 4. 12.

³Pol. 1292 a 32.

⁴Pol. 1263 b 40.

⁵E. N. 1179 b 32 sq.

⁶E. N. 1181 b 22.

good and obedient to the nomoi,¹ an aim capable of attainment, since "there is an element of justice in every man who can share in nomos and a contract."² But if men's desires are to be levelled, a more important task than that of levelling their wealth, they must be educated by the nomoi,³ and the nomima which bring about virtue as a whole are those which are appointed concerning public education.⁴ It is the nomos which commands living in accordance with each virtue,⁵ and the nature of nomos justifies the importance it possesses, for "the nomos is a kind of justice" (dikaion);⁶ it is "logos from intelligence and mind."⁷ What is unjust cannot be nomimon, and, if not nomimon, it cannot be "political or legislative."⁸ All nomima are, in a way, just;⁹ nomos is arrangement and eunomia good arrangement;¹⁰ it is mind without desire;¹¹ it is the mean;¹² as Alcidamas remarked, nomoi are the "kings of the state."¹³

The rule of nomos is discussed in Pol. 1286 a 10 sq., where the question is raised, "Is it better to be governed by the best man or the best nomoi?" Various arguments are presented in answer to the query. Those who maintain that a king should rule claim that the nomoi are too general, and that no art should be practised "according to the letter (grammata)," because particular circumstances alter. On the other hand rulers should possess "the logos of the universal" in order to rule well, and, moreover, the nomos is free from the emotional characteristic existing in a human being.¹⁴ The ruler then should be a law-giver, and there must be nomoi which ought to be final except in particular cases where they do not apply.

Where the nomos cannot decide should the best man or all

¹E. N. 1102 a 10.

³Pol. 1266 b 32.

⁵E. N. 1130 b 24.

⁷E. N. 1180 a 21.

⁹E. N. 1129 b 11.

¹¹Pol. 1287 a 32.

¹³Rhet. 111. 3. 3.

²E. N. 1161 b 7.

⁴E. N. 1130 b 25.

⁶Pol. 1255 a 22.

⁸Pol. 1324 b 27.

¹⁰Pol. 1326 a 32.

¹²Pol. 1287 b 5.

In Top. 140 a 7, a criticism is offered of the definition, "the nomos is a measure or an image of things naturally just," on the ground that the statement is "inferior to a metaphor because it does not clarify; the nomos is not produced by imitation as is an image."

¹⁴Cf. also 1134 b 1.

the citizens make the decision? Aristotle's democratic answer is that it is safer for the multitude to decide but that the multitude should be composed of those who are free, and should do nothing contrary to the nomos except in matters where the nomos is deficient, for even where it is better for certain men to rule they should be guardians and servants of the nomoi. The nomos educates and leaves the rest to the "justest mind."¹ The person who advises that nomos should rule "seems to bid god and mind alone to rule."² In the human being we have also the animal element, but nomos on the other hand is "mind without desire"; personal whim in the individual is too dangerous in public life. The nomos is the mean.³ Occasionally a man can be described as a "nomos to himself," as in the case of the man of wit, ὁ χαρίεις,⁴ but in political matters those who are "themselves a nomos" are so superior to others as to be not really parts of the state,⁵ and for this reason democracies employ ostracism.⁶ But a man who is himself a nomos should not rule.⁷

This sentiment is frequently expressed in Aristotle. Thus⁸ it is fitting for rightly appointed nomoi to direct everything;⁹ it is a dangerous principle (as in the Cretan Cosmoi) for men to act on their own, rather than according to written rules;¹⁰ it would be better for the Spartan Ephors to judge "according to writings and the nomoi";¹¹ in the "fourth kind of oligarchy" men become supreme instead of the nomos, but it is "better (to be governed) according to nomos than according to the wishes of men,"¹² and "for a man rather than nomos to be supreme is bad,"¹³ because the individual has passions. The struggle between nomos and individuals for supremacy is suggested in such phrases as "not the nomos but state officers rule";¹⁴ "decrees (psephismata) supreme, not the nomos";¹⁵ "the mob of poor supreme instead of the nomoi";¹⁶ "to rule without nomos";¹⁷ "demos supreme and supe-

¹1187 a 26.

²1287 a 29.

³1287 b 5.

⁴E. N. 1128 a 32.

⁵Pol. 1284 a 14.

⁶1284 a 18.

⁷1288 a 2.

⁸Rhet. 1. 1. 7.

⁹Cf. Pol. 1282 b 4, nomoi when correct should be supreme.

¹⁰Pol. 1272 a 38.

¹¹Pol. 1270 b 31.

¹²Pol. 1272 b 7.

¹³Pol. 1281 a 36.

¹⁴Pol. 1292 b 6.

¹⁵Pol. 1292 a 7.

¹⁶Pol. 1293 a 10.

¹⁷Pol. 1293 a 26.

rior to the nomoi" (i.e., with more authority than the nomoi.¹ Though Aristotle does not expressly state on each occasion which is preferable, it is safe to infer that he believes nomos should have the supremacy if the state is to be sound. Nomoi have a decided bearing on the stability of the constitution; e.g., "It is not easy for the last type of democracy to endure unless it is well founded on nomoi and ethē,"² and "the Sicilian tyrants lasted longest because they were generally servants of the nomoi."³

What nomoi are good and what should be their aim? Many statements are found which, taken collectively, answer this question in considerable detail. The field of nomoi is the whole of society,⁴ though the aim may be "at that which is expedient for all, or for the best, or for those in power, and so on." The "end" (telos) of nomoi is all-important, and should be "all virtues and education,"⁵ i.e., the good life, not riches or war.⁶ It is not enough to have nomoi against wrongdoing, for the state is an association for the complete and self-sufficient life.⁷ Most people possess nomoi which are "in confusion," or, if there is any end (telos), it is power.⁸ Nomoi may be well-established in two ways, either relatively to a particular group, or absolutely;⁹ attention should be paid to territory, population, and neighboring powers;¹⁰ nomoi should be drawn up with reference to the politeia (constitution),¹¹ for nomoi and the politeia are not the same, the latter having to do with the arrangement of offices and "the supreme power of the constitution."¹² Even the best nomoi are useless unless the citizens are educated in the politeia.¹³ They should aim at friendship between citizens, a real friendship, not the "watery" kind,¹⁴ and guard against quarrels and factions,¹⁵ attacks from without,¹⁶ unequal wealth,¹⁷ pre-

¹Pol. 1298 b 16.

²Pol. 1319 b 4.

³Pol. 1315 b 17.

⁴E. N. 1129 b 14.

⁵Pol. 1333 b 9 sq.

⁶Pol. 1271 b 3.

⁷Pol. 1280 b 19.

⁸Pol. 1324 b 5.

⁹Pol. 1294 a 8.

¹⁰Pol. 1265 a 20.

¹¹Pol. 1282 b 10.

¹²Pol. 1289 a 15; cf. Pol. 1274 b 15, where Pittacus is said to have given nomoi but not a politeia.

¹³Pol. 1310 a 15.

¹⁴Pol. 1262 b 5.

¹⁵Pol. 1308 a 21; cf. 1273 b 24.

¹⁶Pol. 1272 b 23.

¹⁷Pol. 1270 a 19.

eminence in power of an individual,¹ profit on the part of magistrates.² The best legislation is that which aims at the guidance of those equal in birth and power,³ for "nomos is to be ruled and rule in turn."⁴ Attention should be paid also to the lower classes,⁵ and to women.⁶ A politeia is destroyed by "nomoi carried to excess,"⁷ though Charondas is superior to present legislators "in the exactness of his nomoi."⁸ Severity is not advisable; in the nomoi of Draco there is nothing worth mention save their severity.⁹

Similar remarks occur concerning the law-giver or "fashioner of nomoi." He should know the best absolutely and relatively;¹⁰ give consideration to the middle classes;¹¹ establish correctly the deliberative, executive, and judicial offices;¹² have suitable material to work with,¹³ but be able to supply deficiencies.¹⁴ He must strive to understand how men become virtuous, and what is the end of the best life;¹⁵ shun the ethics of power,¹⁶ and adopt one ethical standard for both individual and the group;¹⁷ give adequate attention to the education of the citizens,¹⁸ and to marriage laws.¹⁹

Should ancestral nomoi be altered? This question is discussed in Pol. 1268 b 28 sq. Those who argue in favor of alteration will plead benefit to the community, and point to improvements in the arts and to the fact that old nomoi are too simple and barbaric, that survivals of them are "quite silly." They will say that men seek not the traditional but the good, and that probably primitive men were ordinary and foolish, and that, therefore, it is not wise to leave even the written code unaltered. Particulars cannot be regulated by what is a general statement. But, replies

¹Pol. 1308 b 18.

²Pol. 1308 b 32.

³Pol. 1283 b 39 sq.

⁴E. N. 1134 b 14; Pol. 1287 a 18.

⁵Pol. 1264 a 38.

⁶Pol. 1269 b 19.

⁷Pol. 1310 a 1.

⁸Pol. 1274 b 7.

⁹Pol. 1274 b 17.

¹⁰Pol. 1288 b 28.

¹¹Pol. 1296 b 35.

¹²Pol. 1297 b 38.

¹³Pol. 1326 a 5.

¹⁴Pol. 1332 a 29.

¹⁵Pol. 1333 a 14.

¹⁶Pol. 1333 b 36.

¹⁷Pol. 1337 a 11.

¹⁸Pol. 1336 b 5.

¹⁹Pol. 1334 b 29.

Aristotle, great caution is required here; it is bad for men to become accustomed to alter the *nomoi* easily, and better to allow some flaws to remain. Moreover, it is a mistake to argue from the analogy of the arts, for *nomos* depends on its force on *ethos* which requires time.¹ Guard must be maintained against transgression in little things,² which often results in important changes.³ In the Rhetoric,⁴ it is true, advice is given to the advocate to become familiar with the *nomoi* of foreign peoples but the remark in Pol. 1327 a 14 is somewhat more in harmony with Aristotle's general point of view, namely, that those "reared under other *nomoi*" should not be allowed to enter the country.

Nomos in Xenophon

Xenophon's voluminous writings contain relatively little about *nomos*. The contrast between him and Plato or Aristotle is particularly evident in that respect, as well as in many others. The fact is that Xenophon was pre-eminently a man of affairs, with an interest in military matters, estate management, and hunting. His mind did not move on a philosophic plane.

It is just this fact that makes his remarks about *nomos* of great interest. It indicates that even a practical mind was at times occupied with the problem of *nomos* and its bearing on human society, and that discussions concerning it were not limited to the philosophic schools, the law faculties, and the stage.

The Memorabilia provides most of the important data. In i. 2. 41 sq. we are told of a conversation between Alcibiades and Pericles concerning *nomos*.⁵ In answer to Alcibiades' question, "What is *nomos*?" Pericles declares that whatever has been approved in assembly by the multitude is *nomos*. The question is then raised about the enactments of an oligarchy and the definition is altered to "whatever the ruling power, even a tyrant, enacts is *nomos*." This introduces the problem of force and it is asserted that, if a tyrant enacts without persuasion, the enactment is "force and *anomia*," and the same will therefore hold good whether the force be exerted by a minority or the multitude. The discus-

¹Pol. 1269 a 22.

²Pol. 1307 b 33.

³Pol. 1303 a 22.

⁴i. 4. 13.

⁵Cf. Menzel, Kallikles, p. 51.

sion concludes with this negative result.

In Mem. iv. 4. 12 an attempt is made to define the just. It is equated with "that which is nomimon." Nomoi are the enactments of citizens, appointing what should be done or not done, and the just man is he who obeys the nomoi. Hippias objects that nomoi cannot be considered a "matter of worth" when even those who enact them frequently transgress, but Socrates maintains that it is just as foolish to mock at those who obey nomoi which may be changed as it is to ridicule soldiers because peace may be signed. Obedience to nomoi on the part of citizens is the mark of the good ruler, and in this Lycurgus is to be commended for such obedience creates prosperity in peace and strength in war.

The gods must love man because of their many services to him, and nomoi afford an example of their care, for the gods have given to man his senses, and reasoning power, and power of interpretation "by which we instruct one another, and appoint nomoi, and are governed."¹ All the best things that we learn by nomos we learn through logos.²

References to the function of nomoi are fairly numerous. The main lesson they teach is how to govern and be governed.³ Since admonition is not enough to inculcate virtue there must be nomoi to provide an honorable and just life for the good, and to punish the evil, while there must be teachers and rulers as well;⁴ men are made better by written nomoi while the good ruler is a "seeing nomos" because he can observe and command and punish the unruly;⁵ nomoi turn the citizens to justice "by making them weep";⁶ the nomoi of the Persians, aiming at the common good, may be contrasted with the excessive freedom of other peoples;⁷ "through your nomoi," says Euryptolemus in defence of the generals, "you have become supremely great, and you should therefore guard them and do nothing without them";⁸ the nomoi of Lycurgus are responsible for all the prosperity of the Spartans;⁹ fear and nomos

¹Mem. iv. 3. 12.

²Mem. iii. 3. 11.

³Cyr. i. 6. 20.

⁴Cyr. iii. 3. 5 sq.; cf. also Oec. 14. 6.

⁵Cyr. viii. 1. 21.

⁶Cyr. ii. 2. 14.

⁷Cyr. i. 2. 2.

⁸Hel. i. 7. 29.

⁹Pol. Lac. i. 2.

keep man from incestuous love;¹ education by nomoi has a bearing on military efficiency.²

The place that nomoi hold in a state is indicative of its form of government. The form of rule which is according to nomoi, and over willing subjects, is kingship, while despotism is not according to nomoi but according to the will of the ruler; where offices are filled from "those who perform acts which are nomima," we have aristocracy, while, where wealth is the standard the government, is a plutocracy.³ The standard of the benevolent monarch should not be his own will, but nomos,⁴ but in Athens "the demos is nomos."⁵ Tyrants hire their guards as they would harvesters, but, as Hiero remarks to Simonides, his (Simonides') citizen sentries are protected by nomoi, so that they fear not for themselves and protect the soldiers.⁶

Obedience to nomoi is frequently stressed; e.g., Socrates' respect for the nomoi is described at some length in Mem. iv. 4. 1 sq.; Ageselaus, though powerful himself, by serving the nomoi benefited the state, and if all citizens remained "in the nomoi" prosperity would result;⁷ Sparta is commended because of the obedience to nomoi there observed;⁸ the king swears to rule "according to the established nomoi of the state";⁹ Agesilaus preferred to rule and be ruled constitutionally to great power in Asia;¹⁰ a city cannot live according to nomos without obedience.¹¹

A few more phrases may be cited which show Xenophon's use of the word. In Oec. 7. 30 it is pointed out that the nomos, by making man and wife partners in the home, resembles the god's appointment of them as "partners in the children," and divides their functions in accordance with the nature god has given whereby one is stronger than the other; obedience of nomoi is taught

¹Cyr. v. 1. 10 sq.

²Pol. Lac. xi. 7.

³Mem. iv. 6. 12.

⁴Cyr. 1. 3. 18.

⁵Author of the Ath. Pol. 1. 18.

⁶Hiero 6. 10.

⁷Ages. vii. 2. 3.

⁸Pol. Lac. iv. 6 and viii. 1. 5; but cf. xiv. 7 for the statement that "now the Spartans obey neither God nor the nomoi of Lycurgus."

⁹Pol. Lac. xv. 7.

¹⁰Ages. 11. 16.

¹¹Cyr. viii. 1. 2.

by education, hence the value of hunting;¹ those who appoint nomoi which bring eunomia must be most upright;² there should be guardians as well as good nomoi in well-regulated states, and so, too, in the home, the wife (of Ischomachus) is to be "guardian of the nomoi."³

¹Hunt. xii. 14. 16.

²Ath. Pol. 1. 9.

³Oec. 9. 14.

CONCLUSION

In the preceding discussion an attempt has been made to show the importance of a single word in Greek thought. Like many other things Greek, *nomos* had a humble beginning. It sprang from the soil but rose to the realms of ethics, politics, law, and religion, until Plato¹ could declare that "the common *nomos* of the state is the golden and sacred guidance of reason" or, like Pindar, speak of *nomos* as "lord of all."

The first meaning of the word, though conjecture is here necessary, is apparently "distribution" (of food or pasture), then a "tract of pasture" held by an individual, a "sphere of action," then the "manner of acting" in this sphere. If this "portion" is granted by a divinity, a certain way of acting necessarily follows, and *nomos* has something of the meaning of "injunction," "command," as well as "custom." The ethical significance now develops. A *nomos* may be either a good or bad way of conducting oneself or, as in Pindar, a "rite of burial," "rule of drugs," a "management" or "rule," a "domain" where rule is carried on, i.e., a "state" or "form of rule." When used of divinity the word acquires a dignity which raises it to a higher religious plane. Its relation to justice, nature, individual character (*dike*, *physis*, and *tropos*), is significant.² The *nomoi* of the gods are, of course, nowhere visible in writing any more than are ancestral *nomoi*, but, when formal state commands become written codes, a distinction is observed between written and unwritten *nomos*, giving rise to an ethical problem (still important to-day). *Nomoi* as formal commands of a legislative body also come under analysis, and the place of *nomoi* in the life of society is debated at length by poets as well as by political theorists.

It would perhaps be hardly an exaggeration to say, with J.A.K. Thompson,³ that "to write the history of *nomos* is to write the history of Greek civilization." In the above study a short introduction to such a history has been attempted.

¹Laws 645 a.

²V. chap. iv.

³Greeks and Barbarians, p. 83.

